1020

Y 4
J 89/1
93-35

AMNESTY

D CUMENTS
OCT 4 1974
TH LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 236, H.R. 674, H.R. 2167, H.R. 3100, H.R. 5195, H.R. 10979, H.R. 10980, H.R. 13001, H. Con. Res. 144, and H. Con. Res. 385

RELATING TO AMNESTY

MARCH 8, 11, AND 13, 1974

Serial No. 35

Printed for the use of the Committee on the Judiciary

A11600 644003

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

AMNESTY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 236, H.R. 674, H.R. 2167, H.R. 3100, H.R. 5195, H.R 10979, H.R. 10980, H.R. 13001, H. Con. Res. 144, and H. Con. Res. 385

RELATING TO AMNESTY

MARCH 8, 11, AND 13, 1974

Serial No. 35



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

31-658 WASHINGTON : 1974

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, JR., New Jersey, *Chairman*

HAROLD D. DONOHUE, Massachusetts
JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
WILLIAM L. HUNGATE, Missouri
JOHN CONYERS, JR., Michigan
JOSHUA EILBERG, Pennsylvania
JEROME R. WALDIE, California
WALTER FLOWERS, Alabama
JAMES R. MANN, South Carolina
PAUL S. SARBANES, Maryland
JOHN F. SIEBERLING, Ohio
GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
CHARLES B. RANGEL, New York
BARBARA JORDAN, Texas
RAY THORNTON, Arkansas
ELIZABETH HOLTZMAN, New York
WAYNE OWENS, Utah
EDWARD MEZVINSKY, Iowa

EDWARD HUTCHINSON, Michigan
ROBERT McCLORY, Illinois
HENRY P. SMITH III, New York
CHARLES W. SANDMAN, JR., New Jersey
TOM RAILSBACK, Illinois
CHARLES E. WIGGINS, California
DAVID W. DENNIS, Indiana
HAMILTON FISH, JR., New York
WILEY MAYNE, Iowa
LAWRENCE J. HOGAN, Maryland
M. CALDWELL BUTLER, Virginia
WILLIAM S. COHEN, Maine
TRENT LOTT, Mississippi
HAROLD V. FROEHLICH, Wisconsin
CARLOS J. MOORHEAD, California
JOSEPH J. MARAZITI, New Jersey
DELBERT L. LATTA, Ohio

JEROME M. ZEIFMAN, *General Counsel*
GARNER J. CLINE, *Associate General Counsel*
HERBERT FUCHS, *Counsel*
HERBERT E. HOFFMAN, *Counsel*
WILLIAM P. SHATTUCK, *Counsel*
H. CHRISTOPHER NOLDE, *Counsel*
ALAN A. PARKER, *Counsel*
JAMES F. FALCO, *Counsel*
MAURICE A. BARBOZA, *Counsel*
FRANKLIN G. POLK, *Counsel*
ROGER A. PAULEY, *Counsel*
THOMAS E. MOONEY, *Counsel*
PETER T. STRAUB, *Counsel*
MICHAEL W. BLOMMER, *Counsel*
ALEXANDER B. COOK, *Counsel*
CONSTANTINE J. GEKAS, *Associate Counsel*

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

ROBERT W. KASTENMEIER, Wisconsin, *Chairman*

GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
WAYNE OWENS, Utah
EDWARD MEZVINSKY, Iowa

TOM RAILSBACK, Illinois
HENRY P. SMITH III, New York
CHARLES W. SANDMAN, JR., New Jersey
WILLIAM S. COHEN, Maine

HERBERT FUCHS, *Counsel*
WILLIAM P. DIXON, *Counsel*
BRUCE A. LEHMAN, *Counsel*
THOMAS E. MOONEY, *Associate Counsel*

CONTENTS

Text of— Page

H.R. 236 2
H.R. 674 6
H.R. 2167 7
H.R. 3100 8
H.R. 5195 12
H.R. 10979 15
H.R. 10980 18
H.R. 13001 19
H. Con. Res. 144 21
H. Con. Res. 385 22

Testimony of—

Abzug, Hon. Bella, a Representative in Congress from the State of New York 594
Armstrong, Hon. O. K., in behalf of Veterans of World War I 305
Barger, Rev. Robert Newton 313
Benade, Lt. Gen., Leo E., Deputy Assistant Secretary of Defense for Military Personnel Policy; accompanied by Col. Victor A. DeFiori, Office of Secretary of Defense for Military Personnel Policy 533
Bowles, Glenn, Manager of Operations, Selective Service System 157
Brown, Ronald H., director, Washington Bureau, National Urban League 410
Cary, Dr. W. Sterling, president, National Council of Churches of Christ in the U.S.A.; accompanied by Rev. Richard Killmer, Director of Special Ministry, Vietnam Generation, member, National Council of Churches staff; and E. William D. Galvin, Jr., Emergency Ministry on Conscience and War, United Presbyterian Church 380
Cavin, H. Lynn, immediate past national commander, Marine Corps League 394
Charles, Hopkins, D., Deputy General Counsel, Selective Service System 157
Credle, James, Clergy and Laity Concerned 279
Damato, Edward, national coordinator, Vietnam Veterans Against the War, Chicago, Ill 471
Darling, E. Fred, executive coordinator, Military and Veterans Affairs, Non-Commissioned Officers Association of the U.S.A.; accompanied by H. Lynn Cavin, immediate past national commander, Marine Corps League 394
DeFiori, Col., Victor A., Office of Secretary of Defense for Military Personnel Policy, Department of Defense 533
Dellums, Hon. Ronald V., a Representative in Congress from the State of California 559
Ensign, Tod, counsel for Lewis Simon 401
Freeman, Harrop A., Friends Committee on National Legislation; accompanied by Raoul Kulberg 430
Froehlke, Hon. Robert F., president of the Sentry Corp., and former Secretary of Defense 371
Galvin, E. William D., Jr., Emergency Minstry on Conscience and War, United Presbyterian Church 380
Gruening, Hon. Ernest, former U.S. Senator from the State of Alaska 216
Hehir, Rev. J. Bryan, Director, Division of Justice and Peace, United States Catholic Conference 168
Hoover, Warren, Church of the Brethren 480
Jones, F. P., Colonel USA (retired), director, National Security and Foreign Affairs, Veterans of the Foreign Wars of the United States 267
Killmer, Rev. Richard, Director of Special Ministry, Vietnam Generation, Member, National Council of Churches Staff 380

Testimony of—Continued
Page
Koch, Hon. Edward I., a Representative in Congress from the State of New York 603
Kulberg, Raoul 430
Levine, Ms. Jacqueline, co-chairman, Governing Council, American Jewish Congress 201
Morse, Esq., Walter H., General Counsel, Selective Service System; accompanied by Glenn Bowles, Manager of Operations: Hopkins, Charles, Deputy General Counsel; and S. R. Shaw, L and L Officer 157
Mott, Jeremy, Midwest secretary, the Central Committee for Conscientious Objectors 239
Mullen, Mrs. Peg, State chairman, Iowa Gold Star Families; accompanied by Rev. John Smith, professor of history, St. Ambrose College, Davenport, Iowa 527
Musil, Robert K., Associate Secretary, the Central Committee for Conscientious Objectors; accompanied by Jeremy Mott, Midwest Secretary 239
Norton, Jerry W., Young Americans for Freedom 415
O'Neil, James F., past national commander, the American Legion; accompanied by Herald E. Stringer, Director, National Legislative Commission; and James R. Wilson, Director, National Security Commission 224
Pearle, Lynn, Americans for Democratic Action 422
Poling, James N., on behalf of the Church of the Brethren, general Board; accompanied by Ralph E. Smetzer, Church of the Brethren, and Warren Hoover 480
Rauh, Esq., Joseph, Jr., vice chairman, Americans for Democratic Action; accompanied by Lynn Pearle 422
Rutherford, Ms. Sandra, Vancouver American Exsolve Association 471
Schardt, Arlie, associate director, American Civil Liberties Union, and co-author, *Amnesty? The Unsettled Question of Vietnam* 38
Schwarzschild, Henry, Director, Project on Amnesty, American Civil Liberties Union Foundation; accompanied by Arlie Schardt, Associate Director, ACLU, and co-author, *Amnesty? The Unsettled Question of Vietnam* 38
Shaw, S. R., L and L Officer, Selective Service System 157
Siegel, Larry, Legislative Assistant, on behalf of Hon. Howard W. Robison, a Representative in Congress from the State of New York 617
Simon, Abe, on behalf of Lewis Simon; accompanied by Tod Ensign, counsel for Lewis Simon 401
Simon, Mrs. Patricia, on behalf of Gold Star Families for Amnesty 309
Smetzer, Ralph E., Church of the Brethren 480
Smith, Rev. John, professor of history, St. Ambrose College, Davenport, Iowa 527
Spencer, Wayne, Clergy and Laity Concerned 279
Stringer, Herald E., Director, National Legislative Commission, the American Legion 223
Struve, James, representing the Wisconsin Amnesty Project; accompanied by Edward Damato, national coordinator, Vietnam Veterans Against the War, Chicago, Ill., and Sandra Rutherford, Vancouver American Exsolve Association 471
Taft, Hon. Robert, Jr., a U.S. Senator from the State of Ohio 337
Ulman, Hon. Leon, Deputy Assistant Attorney General; accompanied by Robert W. Vayda, Criminal Division, Department of Justice 29
Vayda, Robert W., Criminal Division, Department of Justice 29
Wells, Rev. John, Major USAF (retired), attorney, former special consultant, U.S. Department of Defense 1964–1969, SANE 210
Wilson, James R., Director, National Security Commission, The American Legion 224
Young, Ms. Trudi, national coordinator, Clergy and Laity Concerned; accompanied by James Credle and Wayne Spencer 279

Additional information—
Administrative Office of the U.S. Courts:
Chart from 1973 Semi-Annual Report of the Director, showing disposition of defendants charge with Selective Service Act violations 350
Table, convictions for violations of Selective Service acts 348

Additional information—Continued

Articles:

	Page
Amnesty: An Act of Grace, by Julian C. Carey, St. Louis University Law Journal, vol. 17, No. 4, summer 1973	56
Amnesty Must Not Be Forgotten, by Hon. Ronald V. Dellums, Congressional Record, October 23, 1973	566
American Deserters and Draft Evaders: Exile, Punishment, or Amnesty? by Douglas W. Jones and Davis L. Raish, the Harvard Internation Law Review, vol. 13, No. 1, Winter 1970	81
Amnesty, Questions and Answers, American Civil Liberties Union	562
Amnesty: The Record and the Need, by John M. Swomley, Jr	575
An Historical Justification and Legal Basis for Amnesty Today, by Harrop A. Freeman, Law and Social Order, Arizona State University Law Journal, vol. 1971, No. 3	438
Congressional Amnesty for War Resisters; Policy Considerations and Constitutional Problems, by Louis Lusky, Vanderbilt Law Review, vol. 25, No. 3, April 1972	126
The Truth About Deserters by Robert K. Musil, the Nation, April 16, 1973	331
Canadian Department of Manpower and Immigration, table, U.S. males age 15–25 granted landed immigrant status in Canada	610
Comparison of amnesty bills, Congressional Research Service, Library of Congress, March 1, 1974	25
Department of Defense:	
Agency report, March 8, 1974	22
Benade, Lt. Gen., Leo E., Deputy Assistant Secretary of Defense:	
Letter, dated November 2, 1973, to Senator Robert Taft, Jr	346
Letter, dated March 1, 1974, to Hon. Robert W. Kastenmeier	557
Niederlehner, L., acting General Counsel, letter, dated March 4, 1974, to Hon. Robert W. Kastenmeier	401
Table of Desertion Rate (Unauthorized Absence of 30 days or more)	541
Table of Absentee Incident Rate (Absentee Incidents of less than 30 days)	541
Table of conscientious objectors, status of in-service applications for discharge or noncombatant service	545
Department of Justice:	
Peterson, Hon. Henry E., Assistant Attorney General:	
Letter, dated November 9, 1973, to Senator Robert Taft, Jr	344
Letter, dated March 1, 1974, to Hon. Robert W. Kastenmeier	36
Traylor, Esq. Lawrence M., Pardon Attorney, letter, dated February 26, 1974, to Rev. W. Sterling Cary	390
Friends Committee:	
Statement of Some Quaker Bodies on Amnesty	433
AFSC Policy Statement on Amnesty	433
Philadelphia Yearly Meeting of the Religious Society of Friends Introduction	434
Southeastern Yearly Meeting of Friends	435
New York Yearly Meeting of the Religious Society of Friends	435
New England Yearly Meeting of Friends	435
Baltimore Yearly Meeting of the Religous Society of Friends	436
Western Yearly Meeting of Friends Church	436
Wilmington (Ohio) Yearly Meeting	437
Kastenmeier, Hon. Robert W., chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice:	
Letter, dated February 15, 1974, to Hon. Henry E. Peterson, Assistant Attorney General, Department of Justice	37
Letter, dated February 20, 1974, to Hon. Melvin R. Laird	339
Letter, dated February 20, 1974, to Hon. James R. Schlesinger, Secretary of Defense	558
Letter, dated February 28, 1974, to Hon. James R. Schlesinger, Secretary of Defense	339
Laird, Hon. Melvin R., letter, dated February 22, 1974, to Hon. Robert W. Kastenmeier, enclosing copy of letter to Commander Ray R. Soden, Veterans of Foreign Wars, dated January 28, 1974	339

Additional information—Continued

Material submitted for the record:

Page

Statement: "The Only True Honor," by Louise Ransom, a Gold Star Mother and member of Americans for Amnesty 621

Statement: "A Case for Amnesty," by the Amnesty Committee of the Center for the Pursuit of Peace, Omaha, Nebr 622

Statement by Mr. Ronald Freund, Midwest regional coordinator, Clergy and Laity Concerned 626

Statement by Robert P. Chenoweth, Berkeley, Calif., a former prisoner of war for 5 years 626

Statement by the Right Reverend Paul Moore, Jr., bishop, the Diocese of New York of the Protestant Episcopal Church 627

Statement of Roger Neville Williams, a draft resister who lived in exile for 4 years 628

Statement of Wesley Sizemore, American exile who has lived in Canada and Europe for over 5 years 630

Mrs. Elizabeth Boardman, Acton, Mass., mother of a war resister who was imprisoned for 19 months 631

Kathleen A. Berglund, wife of a draft resister who served 9½ months in prison 632

Statement on Amnesty, adopted August 16, 1973, by the Priests Senate of the Archdiocese of St. Paul, Minn 634

Statement on Amnesty, adopted by Minnesota Annual Conference of the United Methodist Church, June 14, 1973 635

A Call for Reconciliation, approved by the Committee on International Relations, Minnesota Council of Churches, December 14, 1972 635

Statement of Philosophy adopted by Minnesota Clergy and Laymen Concerned Amnesty Campaign 636

Statement on Amnesty, adopted June 9, 1973, by the DFL State Central Committee 637

Fact Sheet on Minnesotans Who Need Amnesty prepared by Minnesota Clergy and Laity Concerned 637

Article, *The Case for an Unconditional, Universal Amnesty for Draft Evaders and Armed Forces Deserters*, by William D. Wick, reprinted from 22 Buffalo Law Review 311 (1972) 639

Statement by John L. Everard of Cross Plains, Wis 653

Statement of Joseph L. Sax, professor, University of Michigan Law School 654

Statement by Roger Baldwin, executive director emeritus, American Civil Liberties Union 655

Statement by Jack Calhoun, a U.S. Army deserter living in Toronto, Ontario 655

Statement by Attorney Curry First, attorney, reprinted from The Milwaukee Journal 658

Statement on Amnesty for U.S. War Resisters, adopted July 22, 1973, by Amnesty International, London 659

Statement and letter from Lehigh-Pocono Committee of Concern, Bethlehem, Pa 660

Statement of the Union of American Hebrew Congregations on Amnesty, adopted November 1973 by the 52d general assembly 661

Statement of Stamford-Greenwich Monthly Meeting of the Religious Society of Friends, February 17, 1974 661

Statement of the Coalition of American War Resisters in Canada 662

Statement of Nicholas M. Carpinelli, entitled "A Young Man's Case Against Military Indifference, Injustice, and Illegality" 663

Statement Concerning Amnesty, adopted by the Action for Social Justice Committee of the Immaculate Heart Community 666

Letter from the Social Action Secretariat, St. Louis Province, Sisters of St. Joseph of Carondelet 667

One Nation, Indivisible, The Legal and Historical Case for Amnesty, a Fellowship reprint by Prof. Harrop Freeman 668

Amnesty, Why? For Whom?, by the War Resisters League 679

Additional information—Continued
Material submitted for the record—Continued
Questions and Answers on Amnesty, a list of amnesties in American history, 1795 to date, biblical materials and the case for amnesty, and resources for amnesty education, prepared by National Interreligious Service Board for Conscientious Objectors — Page 695
Telegram of March 5, 1974, from Eugene Carson Blake, former general secretary, World Council of Churches — 704
Statement of Nelle M. Reilly, Baltimore, Md — 704
Statement of the American Baptist Churches in the United States — 705
Statement and resolutions on amnesty of the Joint Washington Office for Social Concern — 705
Statement by Mrs. Kay Litchfield, Gold Star Mother, on the subject of amnesty — 708
Resolution on amnesty adopted June 1973, by the Unitarian Universalist Association of Churches and Fellowships in North America — 710
Statement of Hamilton Gregory, chairman, American Friends Service Committee, El Paso, Tex — 711
Statement of Jewish Peace Fellowship, dated March 4, 1974, submitted by Steven S. Schwarzschild — 712
Statement of Kim McGee, Anchorage, Alaska — 713
Resolution No. 2 adopted by the National Council, Reserve Officers Association of the United States, on February 16, 1973 — 714
Statement of L. William Yolton, Cambridge, Mass., with statements about amnesty by the General Assemblies of the United Presbyterian Church in the United States — 714
Statement of National Assembly of Women Religious — 719
Amnesty statement by Bishop Thomas J. Gumbleton, Auxiliary Bishop of Detroit — 719
Statement of Dominic and Ursula Diliberto, Gold Star Parents — 720
Reprint: The Case for Amnesty, Ramsey Clark, Louise Ransom, Carl Rogers and Americans for Amnesty — 721
Letter and Resolution No. 9, adopted August 10, 1973, by the Military Order of the World Wars — 736
Statement on Amnesty, by David Wesley Brown, Prisoner Visitation and Support Committee — 736
Committee statement on amnesty legislation; National Student Coordinating Committee for Freedom in Vietnam and Southeast Asia — 744
Statement entitled: General Order No. 152—the General Amnesty by Morris Sherman — 745
Statement by the National Council of Jewish Women — 746
Statement on Amnesty and attachment from the Liberty Lobby — 747
Lawyers Committee on American Policy Towards Vietnam Statement: The Case for Amnesty — 751
Statement of U.S. National Student Association—National Campus Alliance for Amnesty — 756
Statement of Glenn R. Siegal, representing Vietnam Veterans for a Just Peace — 758
Statement on Amnesty by Gerard Ciarpelli — 761
Statement entitled: A Catholic Worker on Amnesty, by Michael De Gregory — 763
A Statement in Favor of Unconditional Amnesty, by Rev. John M. Burgess, Roman Catholic Bishop of Massachusetts — 763
Testimony on Amnesty by William P. Thompson, Stated Clerk, on behalf of the United Presbyterian Church in the United States — 764
A Proposal for Developing an Amnesty Review Procedure, by Richard J. Lorette, associate dean, School of Management, State University of New York at Binghamton — 767
A Christian Declaration on Amnesty, Peace Section, Mennonite Central Committee — 769

Additional information—Continued
Material submitted for the record—Continued
A preliminary statement on amnesty and race: Memorandum: Race and the Military Services; and Troubled Peace—An Epilogue to Vietnam, submitted by the American Civil Liberties Union Foundation — Page 772
Letter and statement: National Commission for Reconciliation from Felix M. Putterman, national executive director, Jewish War Veterans of the United States — 784
Amnesty Resolution by the Plymouth Congregational Church, Minneapolis, Minn — 785
Statement on Amnesty, J. Stuzrt Inverst, La Jolla, Calif — 785
Statement of Edward J. Damato, national coordinator, Vietnam Veterans Against the War/Winter Soldier Organization, and position paper on amnesty — 788
Resolution by Veterans of World War I USA, Inc., board of administration of the Department of Oklahoma — 806
A Religious Call for Amnesty by the Conference of Major Superiors of Men of the USA, Inc — 806
Statement on Amnesty from Fellowship of Reconciliation — 808
Reconciliation and Amnesty, an address by Rev. Robert V. Moss, president, United Church of Christ — 808
Testimony by the War Resisters League on Amnesty — 811
Statement of John F. Heilman, assistant national director of legislation, Disabled American Veterans — 812
Letter on amnesty submitted for the record by Joseph C. Jones, Toronto, Ont., Canada — 814
Letter submitted for the record by Mr. and Mrs. Laurence J. Leigh — 815
Statement submitted by Jim McClellan, Arlington, Va — 816
Statement by Robert D. Ford, Duncannon, Pa — 817
A Statement on Amnesty, Center of Concern, Washington, D.C. — 817
Letter and excerpt from Congressional Record submitted by Donald L. Harlow, Director of Legislation, Air Force Sergeants Association — 819
Editorial from the Miami News submitted by Stanley M. Pred, Miami, Fla — 820
Resolution on Amnesty, adopted by the executive committee, Canadian Council of Churches — 821
Statement of John W. Piercey, Vienna, Va — 821
Statement of Gunnard Landers, Fall Creek, Wis — 823
Statement of Charles T. Smit, Chicago, Ill — 824
Statement on Amnesty, Women's International League for Peace and Freedom — 825
Statements adopted by the Brooklyn Diocesan Commission for World Justice and Peace — 825
Statement by Daniel J. Guilfoil, Madison, Wis — 827
Statement by Edward Cuddy, chairman, Amnesty and Reconciliation of Western New York — 828
Statement by Jerel W. Olsen, coordinator, National Council for Universal and Unconditional Amnesty — 829
Letter from Rev. Theodore M. Hesburgh, C.S.C., president, University of Notre Dame — 832
Letter from the Rt. Rev. William Davidson, Bishop of Western Kansas — 833
Letter from John H. Burgess, Daytona Beach, Fla — 834
Resolution of the Senate of Priests of the (Catholic) Presbytery of St. Paul and Minneapolis, Minn.; with accompanying petition — 835
Letter from Norman W. Minard, president, Long Island Presbyterian Peace Fellowship — 836
Letter from Berge Avadanian, national commander AMVETS — 836
Statement of Roney F. Hartley, national service and legislative director, AMVETS (American Veterans of World War II, Korea and Vietnam) — 836
Letter from Charles L. Stewart, Gladstone, Mich — 837
Letter from Zelia M. Jensen, Grandview, Tenn — 837

Additional information—Continued
Material submitted for the record—Continued
Page
Resolution: On Amnesty for War Resistance, the Village Independent Democrats, New York, N.Y. 838
Letter from Thomas Harrington Cave, Virginia Beach, Va., submitted for the record by Congressman G. William Whitehurst 838
Statement adopted by Southern California Quarterly Meeting of the Society of Friends 840
Letter and statements submitted by the Southern New England Conference Board of Church and Society 840
Resolution No. 55—Amnesty, adopted by the Delegate Assembly of the Sisters of St. Joseph of Carondelet 844
Letter from Michele C. Morley, Wayzata, Minn 844
Statement of Schenectady Area, Clergy and Laity Concerned 845
Statement of Ruth Deats, West Newton, Mass 845
Statement of Doris Gordon and Jarret Wollstein, Alexandria, Va 846
Letter from Walter Adams, president, American Association of University Professors 850
Editorial, Amnesty to Bind the Wound, the Boston Globe, submitted for the Record by Congressman Robert F. Drinan 851
Statement of the Fleet Reserve Association, presented by Robert W. Nolan, national executive secretary 851
Letter submitted for the Record by H. L. Kirk, Marquette, Mich 853
Statement of Ohio State Branch, Women's International League for Peace and Freedom 853
The Amnesty Debate and the WWWIC Amnesty Proposal: Response to critics, Robert Pickus, president, World Without War Council of the United States 854
Catholic Statements on Amnesty, submitted by Edward McGowan, S.J., director, Project Reconcile 859
Letter from Loran T. Leritz, Rice Lake, Wis 893
A Statement for Amnesty, Kenneth H. Burrows, Bettendorf, Iowa 895
American Exiles in Canada: A Social and Psychological Follow-Up; submitted for the Record by Saul V. Levine, M.D., Toronto, Ont., Canada 896
Letter from George F. Slicer, Hinsdale, N.H.; submitted for the record by Congressman James C. Cleveland 904
Morrow, Mike, letter, dated February 28, 1968, to Mr. and Mrs. John Morrow 311
National Council of Churches:
Backgrounds: Other-than-Honorable Discharges—Problems, and Prospects for Change, released by Vietnam Era Veterans' National Resource project, Emergency Ministries Concerning the War 290
Cary, Rev. W. Sterling:
Letter, February 13, 1974, to the President 389
Letter, dated February 15, 1974, to Hon. William B. Saxbe, Attorney General of the United States 390
Letter, dated February 15, 1974, to Hon. James R. Schlesinger, Secretary of Defense 390
Letter, dated February 15, 1974, to Byron V. Pepitone, Director, Selective Service System 390
Mailgram, dated December 13, 1973, to President Nixon, from W. Sterling Cary, president, National Council of Churches, the Right Reverend Paul Moore, Jr., Episcopal Bishop of New York, William P. Thompson, Stated Clerk of the United Presbyterian Church in the United States, Bishop John Wesley Lord, executive director, Bishops Call for Peace and Self Development of People, Washington, D.C., Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit, and Louise Ransom 388
Mailgram, dated December 23, 1973, to President Nixon, from Robert V. Moss, president, U S Church of Christ, George W. Webber, president, New York Theological Seminary, and Louise Ransom 389
Policy Statement on the Indochina War: Healing the Divisions of the Nation 384

Additional information—Continued
National Council of Chuches—Continued
National Interreligious Service Board: Page
Amnesty Fact Sheet 609
Amnesty Information Service, a List of Amnesties in American history, 1795 to date 611
Religious Statements on Amnesty 482
Newspaper articles:
New York Times:
About Those Exiles, by Edward I. Koch, November 27, 1971 608
Amnesty for Draft Resisters Is Expected To Be Divisive Political Issue for Years, Forces Asking Pardons are Gathering Strength, January 30, 1973 571
Vietnam Veterans are Critical of Discharges that "Stigmatize", October 19, 1973 569
A Welfare Mother, by Kathleen A. Berglund, November 15, 1973 570
Fort Dix: Awaiting Trial, by Lew Simon, February 7, 1974 569
The Pardoning President, February 13, 1974 573
Recent Polls on Amnesty 606
Washington Star-News:
Laird Airs Amnesty Plan Discussed During War, January 5, 1974 568
Non-Commissioned Officers Association of the U.S.A., position paper on "Amnesty" 396
Prepared statements:
Barger, Rev. Robert Newton 314
Credle, James, Clergy and Laity Concerned 279
Dellums, Hon. Ronald V 559
Freeman, Harrop A 430
Gruening, Ernest 218
Hehir, Rev. J. Bryan 175
Jones, Col. F. P 271
Koch, Hon. Edward I 603
Kulberg, Raoul 464
Levine, Ms. Jacqueline 204
Morse, Esq., Walter H 166
Mott, Jeremy 253
Musil, Robert K 243
Norton, Jerry W 417
Poling, James N 524
Rauh, Esq. Joseph, Jr 422
Robison, Hon. Howard W 619
Schwarzschild, Henry 42
Spencer, Wayne 279
Struve, James 476
Taft, Hon. Robert, Jr 360
Young, Ms. Trudi 279
Report of the President's Amnesty Board, August 3, 1951 229
Resolutions:
Resolution on Amnesty, adopted by the governing council, American Jewish Congress, June 10, 1973 208
Resolution on draft evaders and/or deserters, adopted by the American Legion, August 21–23, 1973 224
Resolution No. 459. Oppose Amnesty, adopted by the Veterans of Foreign Wars, August 17–24, 1973 274
SANE policy on amnesty, adopted by the National Board of SANE, June 24, 1972 212
Selective Service System:
Morse, Esq., Walter H., General Counsel, letter, dated February 26, 1974, to Rev. W. Sterling Cary 391
Complaints to U.S. Attorneys; Selective Service System prosecutions, etc., 1974–73 607
Live Male Births and Draft Registrants 607
Soden, Commander, Ray R., Veterans of Foreign Wars, letter, dated January 7, 1974, to the President 275

Additional information—Continued	Page
Statement on Amnesty, October 1973	328
Statement of Purpose, Wisconsin Amnesty Project	478
Statement of the Church of the Brethren on Amnesty, Conference Statement 1973	566
Statements submitted for the record:	
Bevill, Hon. Tom., a Representative in Congress from the State of Alabama	593
Corman, Hon. James C., a Representative in Congress from the State of California	589
Flynt, Hon. John J., Jr., a Representative in Congress from the State of Georgia	594
Hogan, Hon. Lawrence J., a Representative in Congress from the State of Maryland	588
Mitchell, Hon. Parren J., a Representative in Congress from the State of Maryland	615
Murtha, Hon. John P., a Representative in Congress from the State of Pennsylvania	590
Taft, Hon. Robert, Jr.:	
Letter, dated October 24, 1973, to Hon. Robert H. Bork, Acting Attorney General of the United States	345
Letter, dated October 24, 1973, to Hon. James R. Schlesinger, Secretary of Defense	345
S. 2382, to provide persons who unlawfully failed to register for the draft, or who unlawfully avoided military service, with an opportunity to earn immunity from prosecution and punishment for such offenses, and for other purposes	352
Section-by-section analysis of "The Earned Immunity Act of 1974"	355
U.S. Catholic Conference:	
A Historical Perspective on Selective Conscientious Objection, by LeRoy Walters, Journal of the American Academy of Religion, vol. XLI, No. 2, June 1973	189
Declaration on Conscientious Objection and Selective Conscientious Objection, October 21, 1971	179
Resolution on Imperatives of Peace, National Conference of Catholic Bishops, November 16, 1972	185
Resolution on Southeast Asia, National Conference of Catholic Bishops, November 1971	187
The Catholic Conscientious Objector, October 15, 1969	182
White House:	
O'Donnell, Terrece, staff assistant to the President, letter, dated December 18, 1973, to William Galvin	388
Nixon, Hon. Richard M., President, letter, dated January 23, 1974, to Commander Soden	275
Wisconsin Amnesty Project	478
Hearing dates—	
March 8:	
Armstrong, O. K	305
Barger, Robert Newton	313
Bowles, Glenn	157
Charles, Hopkins, D	157
Credle, James	279
Gruening, Ernest	216
Hehir, J. Bryan	168
Jones, F. P	267
Levine, Jacqueline	201
Morse, Walter H	157
Mott, Jeremy	239
Musil, Robert K	239
O'Neil, James F	224
Schardt, Arlie	38
Schwarzschild, Henry	38
Shaw, S. R	157
Simon, Patricia	309
Spencer, Wayne	279
Stringer, Herald E	223
Ulman, Leon	29
Vayda, Robert W	29

Hearing dates—Continued
March 8—Continued
Page
Wells, John 210
Wilson, James R 224
Young, Trudi 279
March 11:
Brown, Ronald H 410
Cary, W. Sterling 380
Cavin, H. Lynn 394
Damato, Edward 471
Darling, E. Fred 394
Ensign, Todd 401
Freeman, Harrop A 430
Froehlke, Robert F 371
Galvin, E. William D., Jr 380
Hoover, Warren 480
Killmer, Richard 380
Kulberg, Raoul 430
Mullen, Peg 527
Norton, Jerry W 415
Pearle, Lynn 422
Poling, James N 480
Rauh, Joseph, Jr 422
Rutherford, Sandra 471
Simon, Abe 401
Smetzer, Ralph E 480
Smith, John 527
Struve, James 471
Taft, Robert Jr 337
March 13: 556
Abzug, Bella 594
Benade, Leo E 533
DeFiori, Victor A 533
Dellums, Ronald V 556
Koch, Edward I 603
Siegel, Larry, on behalf of Hon. Howard W. Robison 617

AMNESTY

FRIDAY, MARCH 8, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, Hon. Robert M. Kastenmeier, chairman, presiding.

Present: Representatives Kastenmeier, Drinan, Mezvinsky, Railsback, and Smith.

Also present: William P. Dixon, Counsel; Bruce A. Lehman, Counsel; and Thomas E. Mooney, Associate Counsel.

Mr. KASTENMEIER. The subcommittee will come to order.

It has now been more than 1 year since the signing of the Paris agreements bringing the long, direct military involvement of the United States in Vietnam to an end. One year ago this month the last American prisoner of war was released from captivity and allowed to return home.

Now that some time has elapsed since the end of our country's direct military involvement in the Vietnam conflict, it ought to be possible to examine rationally the question of whether or not amnesty should be granted to those who refused to serve.

The subcommittee has before it a number of measures providing for several different legislative approaches to the problem of amnesty. These measures raise a question of whether amnesty should be granted at all, and if granted, under what terms.

In addition to seeking answers to these basic questions, the subcommittee hopes to hear testimony which will help to define the legal authority of Congress to grant amnesty legislatively. We would also like to determine the administration's position on the question. President Nixon stated in January 1972, that he would be liberal with amnesty once our troops and prisoners of war were out of Southeast Asia. However, in March 1973, the President stated that he could think of no greater insult to the memory of those who had fought and died in Vietnam than to grant amnesty to those who refused to serve. We would like to establish the administration position as of today, more than a year after the end of direct military involvement in the conflict.

In preparation for these hearings the subcommittee has attempted to obtain information which would define the scope of the problem. We wrote to the Department of Justice requesting data on the number of individuals who had been convicted, indicted or referred for prosecution under the Selective Service Act in the years between 1963 and

1973. The Department has responded with figures showing that 9,167 individuals have been convicted of draft law violations, and 206,775 men have been referred to various U.S. attorneys as draft law delinquent during this period of time.

We requested similar information from the Defense Department regarding military deserters. The Department responded that from 1963 through 1973, almost 4,000 persons were prosecuted for desertion, while over 28,000 deserters from that period currently remain at large.

In addition, the Defense Department supplied us with figures showing that 545,500 men received other than honorable discharges from 1963 through 1973. While not all of these other than honorable discharges are war-related, all would come under the purview of the legislation before the subcommittee.

These figures indicate that the question of amnesty is one affecting large numbers of Americans, and hopefully these hearings will provide a comprehensive overview of the pros and cons before the committee which will affect the lives of so many.

Our committee has before it 10 measures relating to amnesty. Eight of these would grant amnesty in one form or another. The other measures do not have the force of law, and if adopted, would express the sense of Congress that no amnesty should be granted.

Because these measures differ in such great detail from one to another, I recently requested the Library of Congress to prepare a comparison of the different amnesty bills. That comparison was recently circulated to all members of the subcommittee. At this time, without objection, I will submit the 10 bills, the Defense Department report on three of the measures, and the analysis for inclusion in the record.

[The documents referred to follow:]

[H.R. 236, 93d Cong., 1st sess.]

A BILL To exonerate and to provide for a general and unconditional amnesty for certain persons who have violated or are alleged to have violated laws in the course of protest against the involvement of the United States in Indochina, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Resisters Exoneration Act of 1973".

FINDINGS AND DECLARATION

SEC. 2. (a) The Congress finds and declares that a general and unconditional amnesty, with full restoration of all civil, political, property, and other rights is a necessary measure, after the cessation of United States military operations in Indochina, for the reconciliation and reinstatement of persons who have been prosecuted, or who may be subject to prosecution, for failing to comply with any requirement of, or relating to, service in the Armed Forces during the involvement of the United States in Indochina, or for engaging in any nonviolent activity or activity justified by deeply held moral or ethical belief in protest of, or opposition to, the involvement of the United States in Indochina.

(b) The Congress further finds and declares that it is an immunity of citizens of the United States (within the meaning of section 1 of the fourteenth amendment to the Constitution of the United States) to enjoy the annulment of all legal disadvantages that have been incurred or suffered by reason of opposition to the involvement of the United States in Indochina, to the greatest extent consistent with the preservation of life and property.

EFFECT OF GENERAL AMNESTY

SEC. 3. The general amnesty granted by or under this Act shall, with respect to any violation of law enumerated in section 4 or covered under section 6—

(1) restore to the grantee all civil, political, citizenship and property rights which have been or might be lost, suspended, or otherwise limited as a consequence of such violation;

(2) immunize the grantee from criminal prosecution for such violation;

(3) expunge all notation relating to such violation from the records of courts and law enforcement agencies;

(4) require the granting of an honorable discharge to any person who received a discharge other than an honorable discharge from the Armed Forces if such violation was solely the cause, or a substantial cause, of the granting of such other than honorable discharge; and

(5) nullify all other legal consequences of such violation.

AUTOMATIC GENERAL AMNESTY

SEC. 4. (a) Notwithstanding any other provision of law, general amnesty is hereby granted to any person for violation of one or more of the laws enumerated in this section, or regulations and policies promulgated pursuant thereto, if such violation was committed between August 4, 1964, and the effective date of this section. Such amnesty is automatic, and no application to the Amnesty Commission or any other agency is necessary to effectuate it.

(b) General amnesty is granted for violations of any of the following laws:

(1) Section 12 of the Military Selective Service Act (50 App. U.S.C. 462) with respect to the following prohibited acts—

(A) evading or refusing registration, evading or refusing induction into the Armed Forces, or willfully failing to perform any other duty under such Act, or conspiring to do so;

(B) knowingly counseling, aiding, or abetting others to refuse or evade registration or service in the Armed Forces of the United States, or conspiring to do so; or

(C) publicly and knowingly destroying or mutilating any registration or classification card issued or prescribed pursuant to such Act and knowingly violating or evading any of the provisions of such Act, or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of any registration or classification card.

(2) Section 882 of title 10, United States Code, which prohibits the soliciting or advising another, or attempting to solicit or advise others, to desert the Armed Forces of the United States.

(3) Sections 885 and 886 of title 10, United States Code, which prohibit deserting or going absent without leave from the Armed Forces of the United States.

(4) Section 887 of title 10, United States Code, which prohibits missing the movement of a ship, aircraft, or unit with which it is required in the course of duty to move.

(5) Section 888 of title 10, United States Code, which prohibits using contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, territory, Commonwealth, or possession on which he is on duty or present while a commissioned officer in the United States Armed Forces.

(6) Section 1381 of title 18, United States Code, which prohibits the enticing or procuring, or conspiring or attempting to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aiding any such person in deserting, or in attempting to desert from such service; or harboring, concealing, protecting, or assisting any such person who may have deserted from such service, knowing him to have deserted therefrom, or refusing to give up and deliver such person on the demand of any officer authorized to receive him.

(7) Section 2387 of title 18, United States Code, which prohibits the advising, counseling, urging or in any manner causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States, with the intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States.

AMNESTY COMMISSION

SEC. 5. (a) There is established a commission to be known as the Amnesty Commission (hereinafter in this Act referred to as the "Commission").

(b) The Commission shall be composed of five members, qualified to serve on the Commission by virtue of their education, training, or experience, as follows:

(1) One appointed by the President.

(2) One appointed by the President pro tempore of the Senate.

(3) One appointed by the Speaker of the House of Representatives.

(4) One appointed by the minority leader of the Senate.

(5) One appointed by the minority leader of the House of Representatives.

Individuals who are officers or employees of any government are not eligible for appointment to the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) Members shall be appointed for the life of the Commission.

(d) (1) Members of the Commission shall each be entitled to receive an annual salary equal to the annual salary payable to a judge of a United States district court.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Three members of the Commission shall constitute a quorum. The Chairman of the Commission shall be elected by the members of the Commission.

(f) The Commission may appoint and fix the pay of such personnel as it deems desirable, including such hearing examiners as are necessary for proceedings under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5 are applicable to hearing examiners appointed pursuant to this subsection.

(g) (1) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(3) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

GRANT OF GENERAL AMNESTY BY THE COMMISSION

SEC. 6. (a) Notwithstanding any other provision of law, the Commission shall grant general amnesty as provided for in section 3 of this Act to any individual who, during the period beginning August 5, 1964, and ending on the effective date of this Act, violated any Federal law (other than one enumerated in section 4 of this Act) or State or local law if the Commission finds that—

(1) such violation was in substantial part motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina; and

(2) the individual was not personally responsible for any significant property damage or substantial personal injury to others in the course of his violation of any such law;

except that, in any case in which the Commission finds that an individual was personally responsible for significant property damage or substantial personal injury to others in the course of his violation of any such law, the Commission shall grant amnesty if it finds that such conduct was justifiable on the basis of a moral or ethical belief deeply held by the individual.

(b) (1) Whenever the Commission grants general amnesty under this section to an applicant who received a discharge other than an honorable discharge from the Armed Forces, it shall make a finding as to whether any violation of law for which general amnesty is granted was solely the cause, or a substantial cause, of the granting of such discharge.

(2) The Commission shall also have jurisdiction to hear and determine applications from individuals entitled to automatic amnesty under section 4 of this Act and aggrieved by the refusal of the military board concerned to grant an honorable discharge to him under section 3(4) of this Act.

(3) Any finding or determination made by the Commission pursuant to this subsection shall be conclusive upon the military board concerned and is not reviewable by any agency or member of the Armed Forces or any civilian officer of the military establishment.

(c) Any individual desiring amnesty under this section, or review of the decision by a military board to deny him an honorable discharge, shall make application therefor to the Commission in such form as it shall prescribe. The Commission shall not receive any application for amnesty or discharge review under this Act after the close of the forty-eighth month after the month in which this section takes effect.

(d) Any application for amnesty or discharge review which is timely filed shall be determined on the record after opportunity for hearing in accordance with sections 554, 556, and 557 of title 5, United States Code. The entire record developed at the hearing on any application shall be certified to the Commission for decision. All decisions of the Commission shall be by majority vote.

(e) Any applicant may obtain judicial review of a decision by the Commission which is adverse to him by filing a petition for review in the United States court of appeals for the circuit wherein he resides within sixty days after the date on which the decision is made. The Commission shall thereupon file in the court the record of the proceedings on which the Commission based its decision, as provided in section 2112 of title 28. The court shall have jurisdiction to review the decision in accordance with chapter 7 of title 5 and to grant appropriate relief as provided for in such chapter.

(f) Any individual not able to apply to the Commission for a determination under subsection (b)(2) of this subsection because the decision of the military board concerned to deny him an honorable discharge was made after a date sixty days prior to the closing date specified in subsection (c) of this section may obtain judicial review of such decision by filing a petition for review in the United States district court for the district wherein he resides within sixty days after the date of such decision. The military board concerned shall thereupon file in the court the record of the proceedings on which the board based its decision. The court shall have jurisdiction to review the decision of the military board in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided for in such chapter.

RESTORATION OF CITIZENSHIP

SEC. 7. Upon petition to any district court of the United States, the United States citizenship of any former citizen who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina shall be fully and unconditionally restored.

SUITS IN THE DISTRICT COURTS

SEC. 8. (a) The district courts of the United States shall have jurisdiction without regard to the amount in controversy to hear actions brought to redress the deprivation of rights granted by section 3 of this Act, and to grant such legal and equitable relief as may be appropriate.

(b) Notwithstanding the provisions of section 2283 of title 28, United States Code, or any successor provision thereto, a district court hearing an action brought pursuant to subsection (a) of this section may grant injunctive relief staying proceedings in a State court.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY OF PROVISIONS

SEC. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or to other circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 11. Sections 4, 6, 7, and 8 of this Act shall take effect upon the date of cessation of United States military operations in or over South Vietnam, North Vietnam, Cambodia, Laos, and Thailand which date shall be proclaimed by the President and shall be not later than three months after the date of enactment of this Act.

[H.R. 674, 93d Cong., 1st sess.]

A BILL To approve and authorize amnesty or mitigation of punishment for certain persons who have illegally manifested their disapproval of United States participation in the Southeast Asia war; and to provide for restoration of civil and political rights that have been lost or impaired by reason of such illegal acts, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION. 1. (a) The term "cessation of hostilities" means the date on which the President shall declare, by public proclamation, either that armed hostilities in Southeast Asia have ended, or that the level of United States involvement therein has been reduced to such a level as to justify the effectuation of this Act.

(b) The term "person" means any natural or artificial person, including the United States, the several States, and other corporations public, municipal, charitable, or private.

(c) The term "offender" means a natural person who has violated Federal or State law during the Vietnam war solely or partly because of his disapproval of United States participation in such war.

(d) The term "nonviolent military offender" means an offender whole offense has been a violation of the military law of the United States of America and has involved neither injury to another person or substantial damage to or theft of the property of another person, nor the threat thereof nor attempt thereat, including offenders whose punishment has already been completed.

(e) The term "Federal offender" means an offender whose offense has been a violation of the law of the United States or any territory or possession thereof, or the District of Columbia, including offenders whose punishment has already been completed.

(f) The term "State offender" means an offender whose offense has been a violation of the law of any State or subdivision or municipality thereof, including offenders whose punishment has already been completed.

(g) The term "during the Vietnam war" means the period beginning August 4, 1964, and ending with the cessation of hostilities.

APPROVAL AND AUTHORIZATION OF AMNESTY FOR CERTAIN OFFENDERS

SEC. 2. (a) The Congress declares that the interests of the United States require the restoration of domestic harmony at the earliest time; that such interests will be served by the annulment of all legal disadvantages that have been incurred or suffered by reason of opposition to the Vietnam war, to the greatest extent consistent with national security and the preservation of internal order; and that it is an immunity of citizens of the United States (within the meaning of section 1 of the fourteenth amendment to the Constitution of the United States) to enjoy such annulment, to the extent and on the conditions, if any, that may be authorized or imposed by the President of the United States.

(b) The Congress expresses its approval of such amnesty or mitigation of punishment for nonviolent military offenders and for Federal offenders as the President of the United States may, from time to time, grant by public proclamation, unconditionally or on such conditions as he may prescribe.

(c) The President of the United States is authorized to restore the United States citizenship of any or all persons who have relinquished such citizenship solely or partly because of their disapproval of United States participation in the Vietnam war.

(d) The President of the United States is further authorized to grant, by public proclamation, amnesty or mitigation of punishment to State offenders.

(e) Any grant of amnesty pursuant to this Act shall have the effect of restoring all civil and political rights that have been lost or impaired by reason of the violation for which amnesty is granted, unless the President of the United States shall otherwise declare in his public proclamation granting such amnesty.

ADMINISTRATION

SEC. 3. The Attorney General is authorized to issue such rules and regulations as may be necessary to carry out effectively the provisions of this Act.

EFFECTIVE DATE

SEC. 4. This Act shall be effective only upon the cessation of hostilities.

[H.R. 2167, 93d Cong., 1st sess.]

A BILL To offer amnesty under certain conditions to persons who have failed or refused to register for the draft or to be inducted into the Armed Forces of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Amnesty Act of 1973".

SEC. 2. (a) Notwithstanding any other provision of law, any person who has evaded or refused registration under the Military Selective Service Act after August 4, 1964, or has evaded or refused induction in the Armed Forces of the United States under such Act subsequent to such date is hereby granted immunity from prosecution and punishment under section 12 of the Military Selective Service Act, and all other laws, on account of any such evasion or failure to register under such Act or refusal to be inducted under such Act, as the case may be, if not later than one year after the date of enactment of this Act such person—

(1) presents himself to the Attorney General of the United States or such other official or officials as may be designated by the President, and

(2) agrees in accordance with regulations established by the Attorney General of the United States to enlist and serve for a period of two years in the Armed Forces of the United States, or agrees to serve for a period of two years in public service described in section 6(a)(1) of this Act.

(b) The willful failure or refusal of any person to comply with the terms of his agreement under section 2(a) of this Act shall void any grant of immunity made to such person under this Act.

SEC. 3. (a) Any person who has been convicted and is serving a prison sentence for evading or failing to register under the Military Selective Service Act after August 4, 1964, or for evading or refusing induction in the Armed Forces of the United States under such Act after such date shall be released from prison, and the remaining portion of any punishment shall be waived if such person complies with the provisions of section 2(a) of this Act, except that the two-year period of military or public service required thereunder shall be reduced by any period equal to the period served by such person in prison for his conviction, but such period shall not be reduced by more than one year. Any such person shall be afforded an opportunity to present himself to the Attorney General pursuant to section 2(a) of this Act.

(b) Any pending legal proceedings brought against any person as a result of his evading or failing to register under the Military Selective Service Act after August 4, 1964, or for evading or refusing induction in the Armed Forces of the United States if such person enters into an agreement described in section 2(a) of this Act and completes the period of military or public service prescribed in such agreement.

SEC. 4. (a) It is the sense of the Congress that the President grant a pardon to any person convicted of any offense described in section 3(a) of this Act if such person enters into an agreement described in section 2(a) of this Act and completes the period of military or public service prescribed in such agreement.

(b) In any case in which a person has been convicted of an offense described in section 3(a) of this Act and has been released from prison, or given a suspended sentence, it is the sense of the Congress that the President grant a pardon to such person for such offense if such person performs military or public service prescribed in section 2(a) of this Act, reduced by a period equal to the period

served by such person in prison for his conviction (but such period of service not to be reduced by more than one year), provided such person undertook to perform such service before the expiration of one year after the date of the enactment of this Act.

SEC. 5. The provisions of sections 3 and 4 of this Act shall not apply in the case of any person otherwise eligible for the benefits of such provisions if such person (1) is serving a prison sentence for an offense not described in section 3 of this Act or is scheduled to serve, immediately after completion of his sentence for an offense described in section 3 of this Act, a prison term for any other offense for which he has been convicted or (2) is wanted for trial for any other alleged offense, unless the President determines that the public interest would be better served by affording such person the benefits of this Act.

SEC. 6. (a)(1) As used in this Act, the term "public service" means—

(A) Volunteers in Service to America (VISTA), any Veterans' Administration medical facility, any Public Health Service facility, and any other Federal employment involving service in the interest of the public health and welfare if such service is approved for the purposes of this Act by the Secretary of Defense, after consultation with the Secretary of Health, Education, and Welfare; or

(B) any regional, State, or local employment involving service in the interest of the public health and welfare if such employment is approved for the purposes of this Act by the Secretary of Defense, after consultation with the Secretary of Health, Education, and Welfare.

(2) The Secretary of Defense shall promulgate, and shall from time to time revise, a listing of public service employment approved by him for the purposes of this Act.

(b) The Attorney General is authorized to issue such rules and regulations as may be necessary to carry out effectively the provisions of this Act.

SEC. 7. All references in this Act to the Military Selective Service Act shall be deemed to include a reference to previous corresponding Acts.

SEC. 8. (a) No national of the United States (whether by birth or by naturalization) shall lose his United States nationality under the provisions of chapter 3 of title III of the Immigration and Nationality Act (8 U.S.C. 1481–1489), or under any other provision of law relating to loss of nationality, unless and until he shall have obtained nationality or permanent resident status in another country.

(b) This section shall take effect with respect to any national of the United States who, on or after January 1, 1960, does any act which, under the provisions of chapter 3 of title III of the Immigration and Nationality Act, or under any other provision of law relating to loss of nationality, will result in the loss of his United States nationality.

[H.R. 3100, 93d Cong., 1st sess.]

A BILL To exonerate and to provide for a general and unconditional amnesty for certain persons who have violated or are alleged to have violated laws in the course of protest against the involvement of the United States in Indochina, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Resisters Exoneration Act of 1973".

FINDINGS AND DECLARATION

SEC. 2. (a) The Congress finds and declares that a general and unconditional amnesty, with full restoration of all civil, political, property, and other rights is a necessary measure, after the cessation of United States military operations in Indochina, for the reconciliation and reinstatement of persons who have been prosecuted, or who may be subject to prosecution, for failing to comply with any requirement of, or relating to, service in the Armed Forces during the involvement of the United States in Indochina, or for engaging in any nonviolent activity or activity justified by deeply held moral or ethical belief in protest of, or opposition, to the involvement of the United States in Indochina.

(b) The Congress further finds and declares that it is an immunity of citizens of the United States (within the meaning of section 1 of the fourteenth amend-

ment to the Constitution of the United States) to enjoy the annulment of all legal disadvantages that have been incurred or suffered by reason of opposition to the involvement of the United States in Indochina, to the greatest extent consistent with the preservation of life and propery.

EFFECT OF GENERAL AMNESTY

SEC. 3. The general amnesty granted by or under this Act shall, with respect to any violation of law enumerated in section 4 or covered under section 6—

(1) restore to the grantee all civil, political, citizenship and property rights which have been or might be lost, suspended, or otherwise limited as a consequence of such violation;

(2) immunize the grantee from criminal prosecution for such violation;

(3) expunge all notation relating to such violation from the records of courts and law enforcement agencies;

(4) require the granting of an honorable discharge to any person who received a discharge other than an honorable discharge from the Armed Forces if such violation was solely the cause, or a substantial cause, of the granting of such other than honorable discharge; and

(5) nullify all other legal consequences of such violation.

AUTOMATIC GENERAL AMNESTY

SEC. 4. (a) Notwithstanding any other provision of law, general amnesty is hereby granted to any person for violation of one or more of the laws enumerated in this section, or regulations and policies promulgated pursuant thereto, if such violation was committed between August 4, 1964, and the effective date of this section. Such amnesty is automatic, and no application to the Amnesty Commission or any other agency is necessary to effectuate it.

(b) General amnesty is granted for violations of any of the following laws:

(1) Section 12 of the Military Selective Service Act (50 App. U.S.C. 462) with respect to the following prohibited acts—

(A) evading or refusing registration, evading or refusing induction into the Armed Forces, or willfully failing to perform any other duty under such Act, or conspiring to do so;

(B) knowingly counseling, aiding, or abetting others to refuse or evade registration or service in the Armed Forces of the United States, or conspiring to do so; or

(C) publicly and knowingly destroying or mutilating any registration or classification card issued or prescribed pursuant to such Act and knowingly violating or evading any of the provisions of such Act, or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of any registration or classification card.

(2) Section 882 of title 10, United States Code, which prohibits the soliciting or advising another, or attempting to solicit or advise others, to desert the Armed Forces of the United States.

(3) Sections 885 and 886 of title 10, United States Code, which prohibit deserting or going absent without leave from the Armed Forces of the United States.

(4) Section 887 of title 10, United States Code, which prohibits missing the movement of a ship, aircraft, or unit with which it is required in the course of duty to move.

(5) Section 888 of title 10, United States Code, which prohibits using contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, territory, Commonwealth, or possession on which he is on duty or present while a commissioned officer in the United States Armed Forces.

(6) Section 1381 of title 18, United States Code, which prohibits the enticing or procuring, or conspiring or attempting to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aiding any such person in deserting, or in attempting to desert from such service; or harboring, concealing, protecting, or assisting any such person who may have deserted from such service, knowing him to have deserted therefrom, or refusing to give up and deliver such person on the demand of any officer authorized to receive him.

(7) Section 2387 of title 18, United States Code, which prohibits the advising, counseling, urging or in any manner causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States, with the intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States.

AMNESTY COMMISSION

SEC. 5. (a) There is established a commission to be known as the Amnesty Commission (hereinafter in this Act referred to as the "Commission").

(b) The Commission shall be composed of five members, qualified to serve on the Commission by virtue of their education, training, or experience, as follows:

(1) One appointed by the President.

(2) One appointed by the President pro tempore of the Senate.

(3) One appointed by the Speaker of the House of Representatives.

(4) One appointed by the minority leader of the Senate.

(5) One appointed by the minority leader of the House of Representatives.

Individuals who are officers or employees of any government are not eligible for appointment to the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) Members shall be appointed for the life of the Commission.

(d)(1) Members of the Commission shall each be entitled to receive an annual salary equal to the annual salary payable to a judge of a United States district court.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Three members of the Commission shall constitute a quorum. The Chairman of the Commission shall be elected by the members of the Commission.

(f) The Commission may appoint and fix the pay of such personnel as it deems desirable, including such hearing examiners as are necessary for proceedings under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5 are applicable to hearing examiners appointed pursuant to this subsection.

(g)(1) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(3) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

GRANT OF GENERAL AMNESTY BY THE COMMISSION

SEC. 6. (a) Notwithstanding any other provision of law, the Commission shall grant general amnesty as provided for in section 3 of this Act to any individual who, during the period beginning August 5, 1964, and ending on the effective date of this Act, violated any Federal law (other than one enumerated in section 4 of this Act) or State or local law if the Commission finds that—

(1) such violation was in substantial part motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina; and

(2) the individual was not personally responsible for any significant property damage or substantial personal injury to others in the course of his violation of any such law;

except that, in any case in which the Commission finds that an individual was personally responsible for significant property damage or substantial personal injury to others in the course of his violation of any such law, the Commission shall grant amnesty if it finds that such conduct was justifiable on the basis of a moral or ethical belief deeply held by the individual.

(b) (1) Whenever the Commission grants general amnesty under this section to an applicant who received a discharge other than an honorable discharge

from the Armed Forces, it shall make a finding as to whether any violation of law for which general amnesty is granted was solely the cause, or a substantial cause, of the granting of such discharge.

(2) The Commission shall also have jurisdiction to hear and determine applications from individuals entitled to automatic amnesty under section 4 of this Act and aggrieved by the refusal of the military board concerned to grant an honorable discharge to him under section 3(4) of this Act.

(3) Any finding or determination made by the Commission pursuant to this subsection shall be conclusive upon the military board concerned and is not reviewable by any agency or member of the Armed Forces or any civilian officer of the military establishment.

(c) Any individual desiring amnesty under this section, or review of the decision by a military board to deny him an honorable discharge, shall make application therefor to the Commission in such form as it shall prescribe. The Commission shall not receive any application for amnesty or discharge review under this Act after the close of the forty-eighth month after the month in which this section takes effect.

(d) Any application for amnesty or discharge review which is timely filed shall be determined on the record after opportunity for hearing in accordance with sections 554, 556, and 557 of title 5, United States Code. The entire record developed at the hearing on any application shall be certified to the Commission for decision. All decisions of the Commission shall be by majority vote.

(e) Any applicant may obtain judicial review of a decision by the Commission which is adverse to him by filing a petition for review in the United States court of appeals for the circuit wherein he resides within sixty days after the date on which the decision is made. The Commission shall thereupon file in the court the record of the proceedings on which the Commission based its decision, as provided in section 2112 of title 28. The court shall have jurisdiction to review the decision in accordance with chapter 7 of title 5 and to grant appropriate relief as provided for in such chapter.

(f) Any individual not able to apply to the Commission for a determination under subsection (b)(2) of this subsection because the decision of the military board concerned to deny him an honorable discharge was made after a date sixty days prior to the closing date specified in subsection (c) of this section may obtain judicial review of such decision by filing a petition for review in the United States district court for the district wherein he resides within sixty days after the date of such decision. The military board concerned shall thereupon file in the court the record of the proceedings on which the board based its decision. The court shall have jurisdiction to review the decision of the military board in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided for in such chapter.

RESTORATION OF CITIZENSHIP

SEC. 7. Upon petition to any district court of the United States, the United States citizenship of any former citizen who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina shall be fully and unconditionally restored.

SUITS IN THE DISTRICT COURTS

SEC. 8. (a) The district courts of the United States shall have jurisdiction without regard to the amount in controversy to hear actions brought to redress the deprivation of rights granted by section 3 of this Act, and to grant such legal and equitable relief as may be appropriate.

(b) Notwithstanding the provisions of section 2283 of title 28, United States Code, or any successor provision thereto, a district court hearing an action brought pursuant to subsection (a) of this section may grant injunctive relief staying proceedings in a State court.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY OF PROVISIONS

SEC. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or to other circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 11. Sections 4, 6, 7, and 8 of this Act shall take effect upon enactment of this Act.

[H.R. 5195, 93d Cong., 1st sess.]

A BILL To exonerate and to provide for a general and unconditional amnesty for certain persons who have violated or are alleged to have violated laws in the course of protest against the involvement of the United States in Indochina, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Resisters Exoneration Act of 1973".

FINDINGS AND DECLARATION

SEC. 2. (a) The Congress finds and declares that a general and unconditional amnesty, with full restoration of all civil, political, property, and other rights is a necessary measure, after the cessation of United States military operations in Indochina, for the reconciliation and reinstatement of persons who have been prosecuted, or who may be subject to prosecution, for failing to comply with any requirement of, or relating to, service in the Armed Forces during the involvement of the United States in Indochina, or for engaging in any nonviolent activity or activity justified by deeply held moral or ethical belief in protest of, or opposition to, the involvement of the United States in Indochina.

(b) The Congress further finds and declares that it is an immunity of citizens of the United States (within the meaning of section 1 of the fourteenth amendment to the Constitution of the United States) to enjoy the annulment of all legal disadvantages that have been incurred or suffered by reason of opposition to the involvement of the United States in Indochina, to the greatest extent consistent with the preservation of life and property.

EFFECT OF GENERAL AMNESTY

SEC. 3. The general amnesty granted by or under this Act shall, with respect to any violation of law enumerated in section 4 or covered under section 6—

(1) restore to the grantee all civil, political, citizenship and property rights which have been or might be lost, suspended, or otherwise limited as a consequence of such violation;

(2) immunize the grantee from criminal prosecution for such violation;

(3) expunge all notation relating to such violation from the records of courts and law enforcement agencies;

(4) require the granting of an honorable discharge to any person who received a discharge other than an honorable discharge from the Armed Forces if such violation was solely the cause, or a substantial cause, of the granting of such other than honorable discharge; and

(5) nullify all other legal consequences of such violation.

AUTOMATIC GENERAL AMNESTY

SEC. 4. (a). Notwithstanding any other provision of law, general amnesty is hereby granted to any person for violation of one or more of the laws enumerated in this section, or regulations and policies promulgated pursuant thereto, if such violation was committed between August 4, 1964, and the effective date of this section. Such amnesty is automatic, and no application to the Amnesty Commission or any other agency is necessary to effectuate it.

(b) General amnesty is granted for violations of any of the following laws:

(1) Section 12 of the Military Selective Service Act (50 App. U.S.C. 462) with respect to the following prohibited acts—

(A) evading or refusing registration, evading or refusing induction into the Armed Forces, or willfully failing to perform any other duty under such Act, or conspiring to do so;

(B) knowingly counseling, aiding, or abetting others to refuse or evade registration or service in the Armed Forces of the United States, or conspiring to do so; or

(C) publicly and knowingly destroying or mutilating any registration or classification card issued or prescribed pursuant to such Act and knowingly violating or evading any of the provisions of such Act, or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of any registration or classification card.

(2) Section 882 of title 10, United States Code, which prohibits the soliciting or advising another, or attempting to solicit or advise others, to desert the Armed Forces of the United States.

(3) Sections 885 and 886 of title 10, United States Code, which prohibit deserting or going absent without leave from the Armed Forces of the United States.

(4) Section 887 of title 10, United States Code, which prohibits missing the movement of a ship, aircraft, or unit with which it is required in the course of duty to move.

(5) Section 888 of title 10, United States Code, which prohibits using contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, territory, Commonwealth, or possession on which he is on duty or present while a commissioned officer in the United States Armed Forces.

(6) Section 1381 of title 18, United States Code, which prohibits the enticing or procuring, or conspiring or attempting to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aiding any such person in deserting, or in attempting to desert from such service; or harboring, concealing, potecting, or assisting any such person who may have deserted from such service, knowing him to have deserted therefrom, or refusing to give up and deliver such person on the demand of any officer authorized to receive him.

(7) Section 2387 of title 18, United States Code, which prohibits the advising, counseling, urging or in any manner causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States, with the intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States.

AMNESTY COMMISSION

SEC. 5. (a) There is established a commission to be known as the Amnesty Commission (hereinafter in this Act referred to as the "Commission").

(b) The Commission shall be composed of five members, qualified to serve on the Commission by virtue of their education, training, or experience, as follows:

(1) One appointed by the President.

(2) One appointed by the President pro tempore of the Senate.

(3) One appointed by the Speaker of the House of Representatives.

(4) One appointed by the minority leader of the Senate.

(5) One appointed by the minority leader of the House of Representatives.

Individuals who are officers or employees of any government are not eligible for appointment to the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) Members shall be appointed for the life of the Commission.

(d)(1) Members of the Commission shall each be entitled to receive an annual salary equal to the annual salary payable to a judge of a United States district court.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Three members of the Commission shall constitute a quorum. The Chairman of the Commission shall be elected by the members of the Commission.

(f) The Commission may appoint and fix the pay of such personnel as it deems desirable, including such hearing examiners as are necessary for proceedings under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5 are applicable to hearing examiners appointed pursuant to this subsection.

(g)(1) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(2) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(3) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

GRANT OF GENERAL AMNESTY BY THE COMMISSION

SEC. 6. (a) Notwithstanding any other provision of law, the Commission shall grant general amnesty as provided for in section 3 of this Act to any individual who, during the period beginning August 5, 1964, and ending on the effective date of this Act, violated any Federal law (other than one enumerated in section 4 of this Act) or State or local law if the Commission finds that—

(1) such violation was in substantial part motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina; and

(2) the individual was not personally responsible for any significant property damage or substantial personal injury to others in the course of his violation of any such law;

except that, in any case in which the Commission finds that an individual was personally responsible for significant property damage or substantial personal injury to others in the course of his violation of any such law, the Commission shall grant amnesty if it finds that such conduct was justifiable on the basis of a moral or ethical belief deeply held by the individual.

(b)(1) Whenever the Commission grants general amnesty under this section to an applicant who received a discharge other than an honorable discharge from the Armed Forces, it shall make a finding as to whether any violation of law for which general amnesty is granted was solely the cause, or a substantial cause, of the granting of such discharge.

(2) The Commission shall also have jurisdiction to hear and determine applications from individuals entitled to automatic amnesty under section 4 of this Act and aggrieved by the refusal of the military board concerned to grant an honorable discharge to him under section 3(4) of this Act.

(3) Any finding or determination made by the Commission pursuant to this subsection shall be conclusive upon the miltary board concerned and is not reviewable by any agency or member of the Armed Forces or any civilian officer of the military establishment.

(c) Any individual desiring amnesty under this section, or review of the decision by a military board to deny him an honorable discharge, shall make application therefor to the Commission in such form as it shall prescribe. The Commission shall not receive any application for amnesty or discharge reivew under this Act after the close of the forty-eighth month after the month in which this section takes effect.

(d) Any application for amnesty or discharge review which is timely filed shall be determined on the record after opportunity for hearing in accordance with sections 554, 556, and 557 of title 5, United States Code. The entire record developed at the hearing on any application shall be certified to the Commission for decision. All decisions of the Commission shall be by majority vote.

(e) Any applicant may obtain judicial review of a decision by the Commission which is adverse to him by filing a petition for review in the United States court of appeals for the circuit wherein he resides within sixty days after the date on which the decision is made. The Commission shall thereupon file in the court the record of the proceedings on which the Commission based its decision, as provided in section 2112 of title 28. The court shall have jurisdiction to review the decision in accordance with chapter 7 of title 5 and to grant appropriate relief as provided for in such chapter.

(f) Any individual not able to apply to the Commission for a determination under subsection (b)(2) of this subsection because the decision of the military

board concerned to deny him an honorable discharge was made after a date sixty days prior to the closing date specified in subsection (c) of this section may obtain judicial review of such decision by filing a petition for review in the United States district court for the district where in he resides within sixty days after the date of such decision. The military board concerned shall thereupon file in the court the record of the proceedings on which the board based its decision. The court shall have jurisdiction to review the decision of the military board in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided for in such chapter.

RESTORATION OF CITIZENSHIP

SEC. 7. Upon petition to any district court of the United States, the United States citizenship of any former citizen who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina shall be fully and unconditionally restored.

SUITS IN THE DISTRICT COURTS

SEC. 8. (a) The district courts of the United States shall have jurisdiction without regard to the amount in controversy to hear actions brought to redress the deprivation of rights granted by section 3 of this Act, and to grant such legal and equitable relief as may be appropriate.

(b) Notwithstanding the provisions of section 2283 of title 28, United States Code, or any successor provision thereto, a district court hearing an action brought pursuant to subsection (a) of this section may grant injunctive relief staying proceedings in a State court.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEPARABILITY OF PROVISIONS

SEC. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or to other circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 11. Sections 4, 6, 7, and 8 of this Act shall take effect upon the date of cessation of United States military operations in or over South Vietnam, North Vietnam, Cambodia, Laos, and Thailand which date shall be proclaimed by the President and shall be not later than three months after the date of enactment of this Act.

[H.R. 10979, 93d Cong., 1st sess.]

A BILL to offer amnesty under certain conditions to persons who have failed or refused to register for the draft or who have failed, or refused induction into the Armed Forces of the United States, or have deserted the Armed Forces, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Amnesty Act of 1973".

AMNESTY COMMISSION

SEC. 2. (a) There is established a commission to be known as the Amnesty Commission (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of five members, qualified to serve on the Commission by virtue of their education, training, or experience as follows:

(1) One appointed by the President.

(2) One appointed by the President pro tempore of the Senate.

(3) One appointed by the Speaker of the House of Representatives.

(4) One appointed by the minority leader of the Senate.

(5) One appointed by the minority leader of the House of Representatives.

Individuals who are officers or employees of any government are not eligible for appointment to the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) Members shall be appointed for the life of the Commission.

(d) (1) Members of the Commission shall each be entitled to receive an annual salary equal to the annual salary to a judge of a United States district court.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Three members of the Commission shall constitute a quorum for the purpose of conducting business. The Chairman of the Commission shall be elected by the members of the Commission.

(f) The Commission may appoint and fix the pay of such personnel as it deems desirable, including such hearing examiners as are necessary for proceedings under this section. The provisions applicable to hearing examiners appointed under section 3105 of title 5, United States Code, are applicable to hearing examiners appointed pursuant to this subsection.

(g) (1) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(h) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(i) The Administrator of General Services shall provide the Commission on a reimbursable basis such administrative support services as the Commission may request.

(j) Pursuant to the authority vested in the Commission under this Act, they shall issue regulations and rules to insure orderly compliance with the terms of this Act, and such regulations and rules shall become effective thirty days after publication in the Federal Register.

(k) In addition to the Federal agencies specifically enumerated in sections 3(2) and 3(3), the Commission shall have the authority to include other agencies and instrumentalities of the Federal Government as acceptable methods of fulfilling the requirements of this Act.

POWERS OF THE COMMISSION

SEC. 3. (a) Notwithstanding any other provision of law, any person who has evaded or refused registration under the Military Selective Service Act between August 4, 1964 and January 27, 1973, or has evaded or refused induction in the Armed Forces of the United States under such Act between such dates is hereby granted immunity from prosecution and punishment under section 12 of the Military Selective Service Act, and all other laws, on account of any such evasion or failure to register under such Act or refusal to be inducted under such Act, as the case may be, and

(b) Notwithstanding any other provision of the law, any member of the United States Armed Forces who deserted from the military during the period between August 4, 1964 and January 27, 1973, is hereby granted immunity from prosecution and punishment under the Uniform Code of Military Justice on account of any such desertion or other act, as the case might be if not later than one year after the date of enactment of this Act, such person—

(1) presents himself to the Commission or such persons designated by the Commission to receive applications from affected persons,

(2) agrees in accordance with regulations established by the Commission to enlist and serve for a period of two years in the Armed Forces of the United States, or agrees to serve for a period of two years in one of the component agencies of ACTION, a Veterans' Administration Hospital, a Public Health Service Hospital, or other Federal service eligible pursuant to regulations issued under section 2(j) of this Act, and

(3) agrees to serve for such period in the lowest pay grade at which persons serve in the Armed Forces of the United States, one of the component agencies of ACTION, Veterans' Administration hospitals, Public Health Service hospitals, or other Federal service, as the case may be.

(c) The willful failure or refusal of any person to comply with the terms of his agreement under section 2(a) of this Act shall void any grant of immunity made to such person under this Act.

SEC. 4. (a) Any person who has been convicted and is serving a prison sentence for evading or failing to register under the Military Selective Service Act between August 4, 1964 and January 27, 1973, or for evading or refusing induction in the Armed Forces of the United States under such Act between such dates shall be released from prison, and the remaining portion of any punishment shall be waived if such person complies with the provisions of section 3 of this Act, except that the two-year period of military or public service required thereunder shall be reduced by any period equal to the period served by such person in prison for his conviction, but such period shall not be reduced by more than one year. Any such person shall be afforded an opportunity to present himself to the Commission pursuant to section 3 of this Act.

(b) Any person who has been convicted and is serving a prison sentence for desertion of the Armed Forces under the Uniform Code of Military Justice for actions which took place between August 4, 1964 and January 27, 1973, shall be released from prison, and the remaining portion of any punishment shall be waived if such person complies with the provisions of section 3 of this Act, except that the two-year period of military or public service required thereunder shall be reduced by any period equal to the period served by such person in prison for his conviction, but such period shall not be reduced by more than one year. Any such person shall be afforded an opportunity to present himself to the Commission pursuant to section 3 of this Act.

(c) Any pending legal proceedings brought against any person as a result of his evading or failing to register under the Military Selective Service Act between August 4, 1964 and January 27, 1973, or for evading or refusing induction in the Armed Forces of the United States under such Act between such dates, or for desertion of the Armed Forces of the United States under the Uniform Code of Military Justice between such dates, shall be dismissed by the United States if such person enters into an agreement described in section 3 of this Act and completes the period of military or public service prescribed in such agreement.

SEC. 5. (a) It is the sense of the Congress that the President grant a pardon to any person convicted of any offense described in section 3 of this Act if such person enters into an agreement described in section 3 of this Act and completes the period of military or public service prescribed in such agreement.

(b) In any case in which a person has been convicted of an offense described in section 3 of this Act and has been released from prison, or given a suspended sentence, it is the sense of the Congress that the President grant a pardon to such person for such offense if such person performs military or public service prescribed in section 3 of this Act, reduced by a period equal to the period served by such person in prison for his conviction (such period of service not to be reduced by more than one year), provided such person undertook to perform such service prior to the expiration of one year following the effective date of this Act.

SEC. 6. The provisions of sections 4 and 5 of this Act shall not apply in the case of any person otherwise eligible for the benefits of such provisions if such person (1) is serving a prison sentence for an offense not described in section 3 of this Act, or is scheduled to serve, immediately after completion of his sentence for an offense described in section 3 of this Act, a prison term for any other offense for which he has been convicted or (2) is wanted for trial for any other alleged offense, unless the President determines that the public interest would be better served by affording such person the benefits of this Act.

SEC. 7. All references in this Act to the Military Selective Service Act and to the Uniform Code of Military Justice shall be deemed to include a reference to previous corresponding Acts.

SEC. 8. Persons serving in a component agency of ACTION, a Veterans' Administration hospital, a Public Health Service hospital, or other nonmilitary Federal service under this Act shall not be eligible to receive Federal employee benefits otherwise payable to employees of such agencies.

SEC. 9. Any finding or determination made by the Commission pursuant to this subsection shall be conclusive upon the military board concerned and is not reviewable by any agency or member of the Armed Forces or any civilian officer of the Military Establishment.

SEC. 10. Upon petition to any district court of the United States, the United States citizenship of any former citizen who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina shall be fully and unconditionally restored.

SEC. 11. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 12. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or to other circumstances shall not be affected thereby.

SEC. 13. This Act shall be effective thirty days after enactment by the Congress of the United States.

[H.R. 10980, 93d Cong., 1st sess.]

A BILL To offer amnesty to persons who have failed or refused to register for the draft or who have failed, or refused induction into the Armed Forces of the United States, or have deserted the Armed Forces, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Amnesty Act of 1973".

SECTION 1. (a) Notwithstanding any other provision of law, any person who has evaded or refused registration under the Military Selective Service Act between August 4, 1964, and January 27, 1973, or has evaded or refused induction in the Armed Forces of the United States under such Act between such dates is hereby granted immunity from prosecution and punishment under section 12 of the Military Selective Service Act, and all other laws, on account of any such evasion or failure to register under such Act or refusal to be inducted under such Act, as the case may be, and;

(b) Notwithstanding any other provision of the law, any member of the United States Armed Forces who deserted from the military during the period between August 4, 1964, and January 27, 1973, is hereby granted immunity from prosecution and punishment under the Uniform Code of Military Justice on account of any such desertion or other act, as the case might be if not later than one year after the effective date of this Act, such person presents himself to the Attorney General of the United States or other such official or officials as may be designated by the Attorney General.

SEC. 2. (a) Any person who has been convicted and is serving a prison sentence for evading or failing to register under the Military Selective Service Act between August 4, 1964, and January 27, 1973, or for evading or refusing induction in the Armed Forces of the United States under such Act between such dates shall be released from prison, and the remaining portion of any punishment shall be waived.

(b) Any person who has been convicted and is serving a prison sentence for desertion of the Armed Forces under the Uniform Code of Military Justice for actions which took place between August 4, 1964, and January 27, 1973, shall be released from prison, and the remaining portion of any punishment shall be waived.

(c) Any pending legal proceedings brought against any person as a result of his evading or failing to register under the Military Selective Service Act between August 4, 1964, and January 27, 1973, or for evading or refusing induction in the Armed Forces of the United States under such Act between such dates, or for desertion of the Armed Forces of the United States under the Uniform Code of Military Justice between such dates, shall be dismissed by the United States.

SEC. 3. (a) It is the sense of the Congress that the President grant a pardon to any person convicted of any offense described in section 1 of this Act.

(b) In any case in which a person has been convicted of an offense described in section 1 of this Act and has been released from prison or given a suspended sentence, it is the sense of the Congress that the President grant a pardon to such person for such offense.

SEC. 4. The provisions of sections 2 and 3 of this Act shall not apply in the case of any person otherwise eligible for the benefits of such provisions if such person (1) is serving a prison sentence for an offense not described in section 1 of this Act, or is scheduled to serve, immediately after completion of his sentence for an offense described in section 1 of this Act, a prison term for any other offense for which he has been convicted or (2) is wanted for trial for any other alleged offense, unless the President determines that the public interest would be better served by affording such person the benefits of this Act.

SEC. 5. The Attorney General is authorized to issue such rules and regulations as may be necesssary to carry out effectively the provisions of this Act.

SEC. 6. All references in this Act to the Military Selective Service Act and the Uniform Code of Military Justice shall be deemed to include a reference to previous corresponding Acts.

SEC. 7. Upon petition to any district court of the United States, the United States citizenship of any former citizen who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina shall be fully and unconditionally restored.

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or to other circumstances shall not be affected thereby.

SEC. 10. This Act shall be effective ninety days after enactment by the Congress of the United States.

[H.R. 13001, 93d Cong., 1st sess.]

A BILL To amend title 18, United States Code, to provide for the conditional suspension of the application of certain penal provisions of law

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, is amended by inserting immediately after chapter 119 a new chapter, as follows:

"Chapter 121.—CONDITIONAL SUSPENSION OF THE APPLICATION OF CERTAIN PENAL PROVISIONS OF LAW

"Sec.
"2610. Amnesty; conditions.
"2611. Release of persons convicted; dismissal of proceedings.
"2612. Pardons.
"2613. Administration.

"§ 2610. Amnesty; conditions

"(a) No law providing for the punishment of persons evading or refusing registration for the military service of the United States, or of persons evading or refusing induction in the Armed Forces of the United States, shall apply to any person who has evaded or refused such registration or induction during the period beginning August 4, 1964, and ending March 29, 1973, if such person—

"(1) presents himself to the National Amnesty Board, established under section 2614 of this title, not later than two years after the date of the enactment of this Act, or that date, as determined and publicly proclaimed by the President, on which all Americans missing in action who have been held by or known to such government or such forces have been accounted for, whichever date is later;

"(2) agrees, in accordance with regulations established by the National Amnesty Board under section 2614 of this title, to serve for a period of two years in the Armed Forces of the United States, or to serve for a period of two years in such alternate civilian service as the National Amnesty Board determines will contribute to the maintenance of the national health, safety, environmental quality, or other interest; and

"(3) agrees, in accordance with regulations established by the National Amnesty Board under section 2614 of this title to begin such service in the lowest pay grade at which persons serve in the Armed Forces or eligible alternate civilian service, and to continue such service at pay levels no greater than those approved by the National Amnesty Board.

"(b) The National Amnesty Board may, for good cause shown by an applicant for amnesty under the provisions of this chapter, waive in part or in whole the service requirement of subsection (a) of this section with respect to such applicant, after opportunity for a hearing on the record, if in the judgment of such Board the special circumstances of such applicant's case, such as disability to perform such service, merit such extraordinary action.

"(c) Notwithstanding the provisions of section 349 of the Immigration and Nationality Act (8 U.S.C. 1481), no person who makes an agreement under subsection (a) of this section shall be deemed to have lost his status as a national of the United States.

"(d) All laws providing for the punishment of persons evading or refusing registration for the military service of the United States, or of persons evading or refusing induction in the Armed Forces of the United States, shall apply to any person who willfully fails or refuses to comply with the terms of his agreement made under this section. The period beginning with such person's application to the National Amnesty Board under section 2610 of this title and concluding with the end of his compliance with the terms of his agreement shall not be counted toward the running of any statute of limitation with respect to any offense for which amnesty is given under this chapter.

"(e) Any person in prison, whether with respect to an offense for which amnesty may be given under the provisions of this chapter, or with respect to another offense, shall be afforded an opportunity to present himself to the National Amnesty Board pursuant to this chapter for the purpose of seeking the amnesty offered under this chapter. If such Board determines such person is eligible for amnesty under this chapter, such determination shall not modify that person's obligation with respect to any offense other than that offense or offenses with respect to which such Board has acted.

"§ 2611. Release of persons convicted; dismissal of proceeedings

"(a) Any person who has been convicted and is serving a prison sentence for evading or failing to register for the military service of the United States during the period beginning August 4, 1964, and ending March 29, 1973, or for evading or refusing induction in the Armed Forces of the United States during such period shall be released from prison, and the remaining portion of any punishment shall be waived, if such person complies with the provision of section 2610(a) of this title, except that the two-year period of military or civilian service required thereunder shall be reduced by a period equal to the period served by such person in prison with respect to his conviction, and the service requirement shall be completely waived in the case of any person who has served at least eighteen months in prison solely with respect to such conviction.

"(b) Any criminal proceeding brought against any person as a result of his evading or failing to register for the military service of the United States during the period beginning August 4, 1964, and ending March 29, 1973, or for evading or refusing induction in the Armed Forces of the United States during such period, shall be dismissed if such person enters into an agreement described in section 2610(a) of this title and completes the period of military or civilian service prescribed in such agreement, and such proceedings shall be stayed during the period of such service.

"§ 2612. Pardons

"(a) It is the sense of the Congress that the President grant a pardon to any person convicted of any offense described in section 2611(a) of this title if such person presents himself to the National Amnesty Board and enters into an agreement, under section 2610 of this title, and that such pardon shall be conditioned upon the completion of the service prescribed in such agreement, except that with respect to any such person who has been imprisoned with respect to such conviction, such service shall be reduced by a period equal to the period served by such person in prison solely with respect to such conviction. It is the sense of Congress that such service requirement should be waived entirely in the case of any person who has served at least eighteen months in prison solely with respect to such conviction.

"(b) It is the sense of Congress that any pardon made under this chapter shall have the effect of restoring all civil and political rights which may have been lost or impaired as a result of any conviction for which amnesty was given under this chapter, and any such pardon shall have such effect to the extent not prohibited by the Constitution.

"§ 2613. Administration

"(a) There is established, as of the date of the proclamation referred to in section 2610 of this title, the National Amnesty Board (hereinafter referred to as the 'Board').

"(b) The Board shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. The President shall designate one of the members to serve as Chairman. The Chairman shall serve full time and be

an official of the United States. The Chairman shall appoint an Executive Director of the Board who shall serve under the direction of the Chairman of the Board and perform such duties as the Chairman may specify.

"(c) The Board is authorized to issue such rules and regulations as may be necessary to carry out effectively the provisions of this chapter. The Board is also authorized to review such other cases involving offenses or alleged offenses against the United States as the President considers appropriate for such review consistent with the purposes of this chapter, and the Board shall make a report to the President which shall include its findings and its recommendations as to whether pardon or immunity from prosecution (or both) should be granted or denied, and, in any case in which it recommends that such pardon or immunity be granted, its recommendations with respect to the conditions, if any, of such pardon or immunity.

"(d) The members of the Board, except for the Chairman, shall serve without compensation, but shall be entitled to necessary expenses incurred in the performance of their duties under this chapter, as persons employed intermittently in the Government service under section 5703(b) of title 5 of the United States Code. The Chairman of the Board shall be entitled to necessary expenses on the same basis and to the same extent as other members, but shall also receive such compensation as the President shall determine.

"(e) All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance.

"(f) The Board shall cease to exist no later than two years after the end of the one-year period following the date determined by the President under section 2610(a)(1) of this title.".

SEC. 2. (a) The table of chapters of title 18, United States Code, is amended by inserting at the end of the table of chapters for PART I—CRIMES, the following:

"121. Conditional suspension of the application of certain penal provisions of law__ 2610".

(b) The table of chapters of part I of title 18, United States Code, is amended by inserting at the end thereof the following:

"121. Conditional suspension of the application of certain penal provisions of law__ 2610".

SEC. 3. Section 12(a) of the Military Selective Service Act of 1967 is amended by striking out "Any" at the beginning of such section and inserting in lieu thereof "Except as provided in chapter 121 of title 18, United States Code, any".

[H. Con. Res. 144, 93d Cong., 1st sess.]

CONCURRENT RESOLUTION

Whereas more than two million one hundred thousand men were inducted and honorably served in the Armed Forces of the United States since January 1, 1961, and

Whereas more than two million five hundred thousand men have honorably and gallantly served in Vietnam, and

Whereas more than forty-five thousand nine hundred of these men were killed in action, and

Whereas more than three hundred and three thousand of those who honorably and gallantly served were injured in service to their country, and

Whereas the Military Selective Service Act provides for public service in lieu of military service for those who have valid grounds, and

Whereas for every man who refused to accept his responsibility another had to take his place: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President with respect to persons who (1) are in violation of the Military Selective Service Act because of their refusal to register for the draft and/or their refusal to be inducted, or (2) being a member of the Armed Forces, fled to a foreign country to avoid further military service in violation of the Uniform Code of Military Justice.

[H. Con. Res. 385, 93d Cong., 1st sess.]

CONCURRENT RESOLUTION

Whereas more than two million one hundred thousand men were inducted and honorably served in the Armed Forces of the United States since January 1, 1961, and

Whereas more than two million five hundred thousand men have honorably and gallantly served in Vietnam, and

Whereas more than forty-five thousand nine hundred of these men were killed in action, and

Whereas more than three hundred and three thousand of those who honorably and gallantly served were injured in service to their country, and

Whereas the Military Selective Service Act provides for public service in lieu of military service for those who have valid grounds, and

Whereas for every man who refused to accept his responsibility another had to take his place: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President with respect to persons who (1) are in violation of the Military Selective Service Act because of their refusal to register for the draft and/or their refusal to be inducted, or (2) being a member of the Armed Forces, fled to a foreign country to avoid further military service in violation of the Uniform Code of Military Justice.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 8, 1974.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letters of January 23, 1974, requesting the views of the Department of Defense on the following related bills:

H.R. 236, 93rd Congress, a bill "To exonerate and to provide for a general and unconditional amnesty for certain persons who have violated or are alleged to have violated laws in the course of protest against the involvement of the United States in Indochina, and for other purposes."

H.R. 675, 93rd Congress, a bill "To amend Title 18, United States Code, to conditionally suspend the application of certain penal provisions of law."

H.R. 10979, 93rd Congress, a bill "To offer amnesty under certain conditions to persons who have failed or refused to register for the draft or who have failed or refused induction into the Armed Forces of the United States, or have deserted the Armed Forces, and for other purposes."

The provisions of H.R. 675, and H.R. 10979 are similar in that both bills would grant immunity from prosecution and punishment to any person who has evaded or refused registration subsequent to August 4, 1964, or has evaded or refused induction in the Armed Forces of the United States if, not later than one year after enactement, such person presents himself to, in the case of H.R. 675, the Attorney General of the United States or such other official or officials as may be designated by the President, and in the case of H.R. 10979, the Amnesty Commission (established pursuant to Section 2(a) of the bill), and agrees to enlist and serve for a period of two years in the Armed Forces of the United States, or agrees to serve for a period of two years in one of the component agencies of ACTION, a Veteran's Administration Hospital, a Public Health Service Hospital, or other Federal service, such service to be in the lowest pay grade of the respective agencies.

H.R. 10979 describes how and when the Amnesty Commission would be established, as well as the commission's duration, composition, authority, limitations, responsibilities and method of operation.

The bills also provide for the release from prison of persons who have after August 4, 1974, been convicted for evading or failing to register for induction, or who have evaded or refused induction in the Armed Forces—and in the case of H.R. 10979, who have been convicted and are serving a prison sentence for desertion of the Armed Forces under the Uniform Code of Military Justice—provided such persons agree to enlist in the Armed Forces or serve with one of

the agencies mentioned above for a period of two years, less any time served in prison, but not to exceed a reduction of more than one year.

Further, it would be the sense of the Congress that the President grant a pardon to such persons, as well as those who had been released from prison or given a suspended sentence if they undertook to perform the prescribed service within one year following the effective date of the bills' enactment.

H.R. 236, if enacted, would be cited as the "War Resisters Exoneration Act of 1973." The Congress would find and declare that a general and unconditional amnesty, with full restoration of all civil, political, property, and other rights is a necessary measure, after the cessation of United States military operations in Indochina, for the reconsideration and reinstatement of persons who have been prosecuted, or who may be subject to prosecution, for failing to comply with any requirement of, or relating to, service in the Armed Forces during the involvement of the United States in Indochina, or for engaging in any nonviolent activity, or activity in which significant property damage or substantial personal injury resulted, if such activity was justified by deeply held moral or ethical belief in protest of, or opposition to, the involvement of the United States in Indochina.

The bill would further require the granting of an honorable discharge to any person who received a discharge other than honorable from the Armed Forces if such violation was motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina.

In general, amnesty would be granted for violation of Section 12 of the Military Selective Service Act (50 App. U.S.C. 462), Sections 882, 885, 886, 887, and 888 of Title 10, U.S. Code, and Sections 1381 and 2387 of Title 18, U.S. Code.

H.R. 236 would establish an Amnesty Commission identical in composition to that described in H.R. 10979. The commission established by H.R. 236 would have the jurisdiction to hear and determine applications from individuals entitled to automatic amnesy under section 4 of the act and aggrieved by the refusal of the military board concerned to grant an honorable discharge. Any finding or determination made by the commission would be conclusive upon the military board concerned and would not be reviewable by any agency or member of the Armed Forces or any civilian officer of the military establishment.

All amnesties in our history have been proclaimed by the President under his constitutional power to grant reprieves and pardons for offenses against the United States. This authority was used for the first time with regard to deserters in 1807 when President Thomas Jefferson granted full pardons to individuals who had deserted from the Army during the 1795 Whiskey Rebellion if they surrendered themselves within a period of 4 months.

Through the years there have been other Presidential proclamations issued, generally after a war, which granted pardons to deserters. However, certain stipulations or conditions were prescribed, such as (1) deserters in confinement were to be released and returned to duty, (2) deserters-at-large, and under sentence of death, were to be discharged and never again enlisted in the service of the country, (3) deserters who returned were to forfeit all pay and allowances during their time of absence, (4) deserters who returned were to make up time lost by their absence and complete their terms of military obligation, and (5) deserters had to surrender themselves within a specified time after the proclamation.

The last amnesty for military deserters was granted pursuant to Proclamation No. 1687 issued by President Coolidge on March 5, 1924. That Proclamation was prompted by Public No. 291, 62d Congress, approved, August 23, 1912 which provided that deserters from the Armed Forces would forfeit their citizenship. Although the 1924 Proclamation is often believed to be a general amnesty granted to deserters, it only applied to those individuals who had deserted after the Armistics of World War I, and only restored their right to citizenship which had been forfeited upon their conviction. Approximately 100 men were affected by the Proclamation.

There has been no general amnesty granted to individuals who deserted during World War II, the Korean conflict or the Vietnam conflict.

In regard to draft evaders, as opposed to deserters, limited amnesty was granted by President Roosevelt in 1933 and President Truman in 1947 under circumstances which it is understood are being described by the Selective Service System in testifying on the present bills.

Granting immunity from prosecution and punishment and release from prison of those persons described in these bills who chose to violate or evade provisions of the law requiring service to their country must be considered in relation to

those persons who did not take such action but, instead, accepted their obligations and responsibilities. During the period 1964–1973, more than 1,800,000 men were inducted in the armed forces. In addition, hundreds of thousands more were motivated by the possibility of induction to volunteer for enlistment into the active or reserve forces or volunteered for patriotic or other reasons. Other thousands chose to enter officer procurement programs, such as ROTC, in lieu of being inducted. Unfortunately, many of these officers and men were among the more than 45,000 who died in the service of their country or among the 300,000 who were wounded. Others became prisoners of war. Those persons who were inducted or were motivated by the draft to enlist were not given the option of serving in a public or private civilian activity in lieu of military service as offered to those for whom immunity from prosecution would be provided in H.R. 675 and H.R. 10979. It is quite possible that many persons who entered military service would have preferred an alternative of this type. In view of these considerations, we do not consider these bills to be equitable.

It would appear that a significant number of those who violated or evaded the law requiring service to their country did so because they disagreed with the United States' involvement in the Vietnam war, and it is conceivable that some of these persons would now be willing to take advantage of the provisions of H.R. 675 and H.R. 10979 by entering the armed forces. However, their past actions strongly indicate that if any future situation involving the use of the armed forces arose, their presence, dependability, efficiency and effectiveness would depend entirely on their moral or political concurrence in this action. Their instability in this regard could have an adverse effect on the morale of others serving with them, could constitute a dangerous risk to the safety of themselves and others, and could jeopardize the ability of the units in which they served to complete their missions successfully.

It is our view that the substitution of military service or service in an alternate civilian activity for a penal sentence, or worse, unconditional amnesty as proposed under H.R. 236, is inappropriate. It is also our belief that individuals who have violated civil law should be answerable to civil authorities. Fines of not more than $10,000 and/or imprisonment for not more than five years are presently authorized for persons who violate the provisions of the Military Selective Service Act. H.R. 675 and H.R. 10979 would, in effect, substitute military or civilian service for those penalties. The Department of Defense holds military service to be a privilege, and we are opposed in principle to any procedure which would make the performance of military service a consequence of a violation of civil law. It follows that we are also opposed to a bill such as H.R. 236 which would require no punishment whatsoever to persons who have violated military and/or civil law.

In reference to H.R. 236, the Department of Defense has made every effort to insure that the system of issuance of characterized discharges includes procedural safeguards to ensure that the individual's rights are adequately protected and that the character of the discharge accurately reflects the quality of the individual's service. Since 1961, over ten million men and women have been separated from the armed services. Ninety-five percent of those individuals have been discharged under honorable conditions.

Pursuant to 10 United States Code 1553, the Secretaries of the military departments have established discharge review boards which, except for cases involving a discharge which "resulted from the sentence of a General Court-martial," may "change a discharge or dismissal, or issue a new discharge." A former serviceman can apply to such a board for relief at any time up to 15 years from the date of his discharge. Although an individual may appear before the discharge review board if he so desires, personal appearance is not necessary to accomplish remedial relief. The discharge review board will determine whether the discharge was equitably and properly given. If it does not so find, it will change the character of the discharge.

In addition to the administrative discharge review boards established under 10 United States Code 1553, each of the military departments has also established a board for the correction of military records under 10 United States Code 1552. These boards consist of five civilian members and have broad powers to recommend to the Secretary concerned a change in an individual's military records, including his discharge, to correct an inaccuracy or to cure an injustice.

The existing review board system has adequate authority to correct an error or cure any injustice which may have been done in the issuance of an other than honorable discharge. Therefore, the establishment of an amnesty commission

concerned only with the review of discharges of Vietnam era veterans is questionable on the grounds of equality of treatment for veterans of former and future periods.

Finally, enactment of these bills would establish an undesirable precedent which would encourage persons to avoid service in any future conflict, reasonably confident that once the conflict is over they would be granted immunity from prosecution.

For the reasons discussed above, the Department of Defense opposes the enactment of H.R. 236, H.R. 675 and H.R. 10979.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 1, 1974.

To: House Subcommittee on Courts, Civil Liberties and the Administration of Justice, Attn: William P. Dixon.
From: American Law Division.
Subject: Comparison of Amnesty Bills.

This is in response to your request for a comparison of the following amnesty measures, H.R. 236, 674, 2167, 3100, 5195, 10979, 10980, and H. Con. Res. 144 and 385. We are enclosing such a comparison.

Since the preparation of the enclosed report, one additional amnesty bill, H.R. 13001, has been introduced in the House of Representatives. H.R. 13001 establishes a National Amnesty Board and provides for immunity from prosecution, dismissal of pending proceedings, and release from prison for draft evasion and induction refusals, conditioned upon an agreement to perform two years of military or public service. Except for the establishment of the Board, H.R. 13001 is generally similar to H.R. 2167.

RICHARD E. ISREAL,
Legislative Attorney.

COMPARISON OF AMNESTY BILLS

Introduction

H.R. 236, 3100 and 5195 are the most comprehensive bills in terms of the offenses for which amnesty is authorized and the effect of amnesty. H.R. 236 grants automatic, general amnesty for a number of specific offenses and establishes an Amnesty Commission to grant general amnesty for the nonviolent or otherwise "morally justified" violation of Federal, State or local laws where the violation was substantially motivated by opposition to United States involvement in Indochina. Among the effects of amnesty is a restoration of all civil, political and property rights and the nullification of all legal consequences of the violation. There is also a provision for the judicial restoration of citizenship. H.R. 5195 is identical to H.R. 236 and H.R. 3100 is identical except for the effective date. For the purposes of this comparison, a reference to H.R. 236 is also a reference to H.R. 3100 and 5195.

H.R. 674 is a less comprehensive bill which authorizes the President to grant amnesty for the violation of State or local laws where the violation was solely or partly motivated by disapproval of United States participation in the Vietnam War. For similarly motivated violations of Federal law or nonviolent violations of military law, H.R. 674 simply expresses approval of Presidential amnesty or mitigation of punishment. Except as provided by the President, amnesty restores all civil and political rights lost as a result of the violation. There is also a provision for the Presidential restoration of citizenship.

H.R. 2167, 10979 and 10980 grant immunity from prosecution, a dismissal of pending proceedings, and release from prison for draft evasion, induction refusal and, in the case of H.R. 10970 and 10980, for desertion. H.R. 2167 and 10979 condition such grants on an agreement to perform two years of military or public service. As in H.R. 236, H.R. 10979 establishes an Amnesty Commission, but it has much more limited functions. All three bills have Presidential pardon provisions and H.R. 10979 and 10980 have provisions for a judicial restoration of citizenship.

The two resolutions, H. Con. Res. 144 and 385, simply express disapproval of Congressional or Presidential amnesty for draft evasion, induction refusal, and desertion. These two resolutions are not further considered in this report. The remainder of this report is a comparison of the bills with respect to: (1) constitutional basis of amnesty, (2) grants of amnesty, (3) conditional grants of amnesty, (4) Congressional approval of Presidential amnesty and pardons, (5) offenses which are the subject of amnesty, (6) effect of amnesty, (7) restoration of citizenship, (8) administration and (9) judicial remedies.

1. Constitutional Basis for Amnesty

Only two of the bills have provisions concerning the Constitutional basis for grants of amnesty. H.R. 236 declares that it is an immunity of United States citizens, under the 14th Amendment, to enjoy the annulment of all legal disadvantages incurred by reason of opposition to United States involvement in Indochina, to the greatest extent consistent with the preservation of life and property. H.R. 674 has a similar provision except that the extent of the annulment is that consistent with national security and domestic order.

2. Grants of Amnesty

H.R. 236 grants automatic, general amnesty for violations of a number of specific federal laws and establishes an Amnesty Commission to grant general amnesty for the nonviolent or otherwise morally justified violation of other Federal, State, or local laws where the violation was substantially motivated by opposition to United States involvement in Indochina. H.R. 674, unlike H.R. 236, does not provide for a direct Congressional grant of amnesty but authorizes the President to grant amnesty or mitigation of punishment for violations of State or local law, but not Federal law, where the violation was solely or partly motivated by disapproval of the United States participation in the Vietnam War. There is no requirement that the violation of State or local law must have been a nonviolent one.

H.R. 10980, as in H.R. 236 but unlike H.R. 674, provides for direct Congressional action. H.R. 10980, grants immunity from prosecution, dismissal of pending proceedings, and release from prison for draft evasion and induction evasions or refusals, under the Military Selective Service Act, and for desertion under the Uniform Code of Military Jusice. The provisions for release from prison and dismissal of pending proceedings are inapplicable where the otherwise eligible person is serving or is scheduled to serve a sentence for an offense which is not one of the above-noted offenses or is wanted for trial of any other offense unless the President determines that the public interest would be better served by affording the person the benefits of such release or dismissal.

3. Conditional Grants of Amnesty

As in H.R. 10980, H.R. 10979 grants immunity from prosecution, dismissal of pending proceedings, and release from prison for draft evasion, induction refusals and desertion. H.R. 2167 contains similar provisions but does not cover desertion.[1] Unlike H.R. 10980, the grants of immunization, etc. in H.R. 2167 and 10979 are conditional. The benefits are available only if the person agrees to serve two years of military or public service.[2] Both H.R. 2167 and 10979 have provisions, similar to those in H.R. 10980, concerning the inapplicability of benefits where the person is serving a sentence or is wanted for trial for another offense.

4. Congressional Approval of Presidential Amnesty and Pardons

While H.R. 674 authorizes the President to grant amnesy for violations of State or local law and to make restorations of citizens, the bill simply expressed approval for the President's conditional or unconditional grant of amnesty or mitigation of punishment for violations of Federal law or nonviolent violations of military law which are motivated solely or partly by disapproval of United States participation in the Vietnam War. H.R. 674 also declares that the annulment of all legal disadvantages, to the extent consistent with national security and domestic order, is in the national interest of restoring domestic harmony

[1] With respect to the dismissal of pending proceedings, H.R. 10979, Sec. 4(c) and H.R. 10980, Sec. 2(c) specifically provide for such a dismissal and this is apparently the intent of Sec. 3(b) of H.R. 2167, although it is incompletely written.

[2] In H.R. 10979, the condition of an agreement for military or public service apparently attaches to immunization against prosecution for draft evasion and inductional refusals, but the drafting is ambignous. It is clear that the other benefits in H.R. 10979, are conditioned on an agreement for such service.

and that it is an immunity of United States citizenship under the 14 Amendment to enjoy such annulment as the President may authorize.

H.R. 2167, in addition to conditionally granting immunity from prosecution, dismissal of pending proceedings, and release from prison for draft evasion and induction refusals, also declares Congressional approval of the President's granting a pardon to persons convicted of these offenses, including persons who have been released, provided that the person performs the required military or public service. H.R. 10979 has a similar provision, but includes desertion as an offense for which a pardon should be granted. H.R. 10980, which has no requirement for the performance of military or public service, simply declares approval for a Presidential pardon of persons convicted of draft evasion, induction refusal, and desertion.

5. Offenses Which Are the Subject of Amnesty

H.R. 236 grants automatic, general amnesty for the violation of any of the following laws: (1) Sec. 12 of the Military Selective Service Act, 50 App. U.S.C. Sec. 462, with respect to draft evasion, induction refusals, the willful failure to perform any other duty under the Act, or draft card mutilation or related offenses, (2) 10 U.S.C. Sec. 882, solicitation of desertion, (3) 10 U.S.C. Sec. 885, desertion, and 886, absence without leave, (4) 10 U.S.C. Sec. 887, missing movement of ship, aircraft or unit, (5) 10 U.S.C. Sec. 888, officer's contempt toward officials, (6) 18 U.S.C. Sec. 1381, enticing desertion or harboring deserters, and (7) 18 U.S.C. Sec. 2387, counseling or advising insubordination, disloyalty, mutiny or refusal of duty. This provision applies to offenses occurring between Aug. 4, 1964 and the date of the cessation of American military operations in Indochina as proclaimed by the President. In addition to the automatic grant of general amnesty for these specific offenses, the Amnesty Commission established by H.R. 236 is authorized to grant general amnesty for any other nonviolent or otherwise morally justified violation of Federal, State or local law which is substantially motivated by opposition to United States involvement in Indochina. This provision applies to offenses occurring between Aug 5, 1964 and the date of the cessation of American military operations in Indochina as proclaimed by the President.

As in the case of the Amnesty Commission in H.R. 236, H.R. 674 does not specifically enumerated the offenses for which the President may grant amnesty. H.R. 674 simply authorizes the President to grant amnesty or mitigation of punishment for violations of State or local law, which occurred between Aug. 4, 1964 and the date of the cessation of Vietnam hostilities, as proclaimed by the President, and which were motivated solely or partly by disapproval of United States participation in the Vietnam War. H.R. 674 also expresses approval of Presidential amnesty for violations of Federal law and nonviolent violations of military law which have been similarly motivated but there is no specific reference in the bill to any particular statutory offense. H.R. 2167, 10979, and 10980 do, however, refer to specific statutory offenses for which immunity from prosecution, a dismissal of the pending proceedings, and release from prison is granted. All three bills apply to draft evasion and induction refusals under the Military Selective Service Act and H.R. 10979 and 10980 also apply to desertion under the Uniform Code of Military Justice. H.R. 2167 applies to offenses committed after Aug. 4, 1964 and H.R. 10979 and 10980 apply to offenses committed between Aug. 4, 1964 and Jan. 27, 1973.

6. Effect of Amnesty

H.R. 236 provides that general amnesty, granted either automatically or by the Amnesty Commission, has the following effects: (1) the restoration of all civil, political, citizenship and property rights which have been or might be lost, suspended, or otherwise limited as a consequence of a violation covered by the Act, (2) immunization from prosecution for such violation, (3) expungement of criminal records relating to such violation, (4) the grant of an honorable discharge to a person who received an other than honorable discharge, solely or substantially because of such violation, and (5) nullification of all other legal consequences of such violation.

The effect of amnesty granted under H.R. 674 is much more limited than the effect under H.R. 236. H.R. 674 provides that a grant of amnesty shall restore all civil or political rights that have been lost or impaired by reason of the violation for which amnesty is granted, unless the President shall declare otherwise in his grant of amnesty. Apart from the provision on the effects of amnesty, the bill

also provides for mitigation of punishment. There are no provisions in H.R. 2167, 10979 and 10980 on the effects of amnesty, as indeed these bills do not even use the term amnesty, except in their titles and, in H.R. 10979, in the name of the commission. Instead, the bills provide for three specific types of benefits, i.e. immunity from prosecution, dismissal from pending proceedings, and release from prison.

7. Restoration of Citizenship

H.R. 236, 10979 and 10980 provide that upon petition to any United States District Court, the court shall fully and unconditionally restore citizenship to any former citizen who states that he renounced his citizenship solely or partly because of disapproval of United States involvement in Indochina. H.R. 674 authorizes the President to restore citizenship to any person who has relinquished citizenship solely or partly because of disapproval of United States participation in the Vietnam War. H.R. 2167 does not have a provision on the restoration of citizenship but does provide that no United States national shall lose his nationality under the Immigration and Nationality Act, Title III, ch. 3 (8 U.S.C. Sec. 1481–1489) or any other provision of law relating to the loss of nationality, unless and until he shall have obtained nationality or permanent resident status in another country.

8. Administration

H.R. 236 establishes an Amnesty Commission which is to receive applications from persons seeking amnesty for nonviolent or otherwise morally justified violations of Federal, State or local laws which were substantially motivated by opposition to United States involvement in Indochina. The commission is to determine if the violation was nonviolent or otherwise morally justified and if the opposition was substantially motivated by opposition to American involvement in Indochina. Upon finding that the offense was nonviolent or otherwise morally justified and properly motivated, the commission is to grant amnesty. In granting amnesty, the commission is to determine if the amnestied offense was the sole or substantial cause of an other than honorable discharge and is to hear persons entitled to automatic amnesty who are aggrieved by the refusal of a military board to grant an honorable discharge.

H.R. 10979, like H.R. 236, also establishes an Amnesty Commission. The Commission is to receive application from persons seeking immunity from prosecution, etc. and make regulations concerning the requirement of military or public service. However, it is the Act itself that declares the immunity, etc. The Attorney General has similarly limited functions in H.R. 2167. Additionally, the Secretary of Defense is authorized to publish and revise a list of acceptable public service employment. H.R. 674 and H.R. 10980 simply authorize the Attorney General to make rules and regulations to carry out the Act.

9. Judicial Remedies

In addition to the provision for the judicial restoration of citizenship, H.R. 236 provides for judicial review of an adverse action by the Amnesty Commission and, in certain instances, a refusal by a military board to grant an honorable discharge. H.R. 236 also grants the District Courts jurisdiction over denials of the benefits and effects of amnesty and to stay related State court proceedings. With respect to judicial remedies, H.R. 10979 and 10980 have only the above-noted provisions on the restoration of citizenship.

RICHARD E. ISRAEL,
Legislative Attorney, American Law Division.

Mr. KASTENMEIER. Before I call our first witnesses let me remind our witnesses of the time pressures we are under because of the large number of witnesses we will hear.

The complete written statement of each witness will be included in its entirety in the record. In presenting oral testimony witnesses should summarize their formal statement and take no more than 15 minutes for their presentation.

I am very pleased to greet as our first witness this morning Mr. Leon Ulman, Deputy Assistant Attorney General, representing the Department of Justice.

Mr. Ulman, you may introduce your associate and you may proceed.

TESTIMONY OF HON. LEON ULMAN, DEPUTY ASSISTANT ATTORNEY GENERAL; ACCOMPANIED BY ROBERT W. VAYDA, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. ULMAN. Mr. Chairman, members of the subcommittee, I have with me Mr. Robert W. Vayda, who handles Selective Service matters in the Criminal Division. He will be available for questions concerning prosecutive policy of the Department and any statistics that you need in addition.

Mr. KASTENMEIER. Could you speak into the microphone so you can he heard more clearly?

Thank you.

Mr. ULMAN. Our views on the current bills before the committee are limited to legal aspects.

I might say the subject of amnesty is one in which legal views are not entirely in agreement. Accordingly, I think it would be helpful to examine the legal issues generally before turning to a discussion of the particular features of each measure. But my conclusion is that it is quite difficult to say that Congress has the constitutional power to legislate amnesty. The term amnesty is not mentioned in the Constitution. The only relevant provision is to be found in Article II, Section 2, which states that the President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. The term "amnesty" is generally employed where a pardon is extended to whole classes rather than to individuals. Otherwise, the distinction between amnesty and pardon is solely of a philosophical interest than legal importance.

Amnesty has been granted by our Presidents on several occasions as a matter of grace. This occurred first by President Washington in 1795, by Presidents Jefferson, Madison, and Jackson in granting amnesty to deserters from the Armed Forces if they would agree to return to military duty and complete their obligations.

Prior to the period of Reconstruction, the President's competence to grant amnesty was never challenged, and Presidents Lincoln and Johnson did so, stating that the Constitution gave them absolute discretion in these matters.

In 1869, the Judiciary Committee of the Senate submitted a report asserting that the President lacked such power, but nevertheless Presidents continued to grant amnesty, the latest occasion being that of President Truman in 1946.

It is now well settled that the President, acting pursuant to his constitutional pardoning power, is authorized to grant full or conditional amnesties as well as pardons. It is also well established that Congress cannot interfere with the exercise of that power.

It is clear, therefore, that the President as a matter of constitutional power, may if he so desires, grant full or conditional amnesty to Vietnam war resisters who have violated Federal law.

On the other hand, the scope of congressional authority in this area is unclear at best. As far as we have been able to determine, Congress has never enacted in our long history a general amnesty law purporting to confer clemency by its own action, and therefore, the Supreme Court has never had the occasion to adjudicate the constitutionality of such a law.

Two cases in the Supreme Court have been cited to support such a view, *Brown* v. *Walker* and *The Laura*.

Prof. Louis Lusky in his article, "Congressional Amnesty for War Resisters," 25 Vand. L. Rev. 525 (1972), suggests that *Brown* v. *Walker* and *The Laura* indicate Congress may have an amnesty power. However, we do not read those cases to that effect. As Chief Justice Marshall said in *Cohens* v. *Virginia*, 6 Wheat. 264, "It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used."

In addition, granting immunity to witnesses has occurred in *Brown* v. *Walker* was given on a quid pro quo basis and is readily distinguishable from the grace concept intrinsic in amnesty. The statute that was involved in *The Laura* left the exercise of the power of remission wholly within the discretion of the Secretary of the Treasury. The penalty in that case, therefore, was not remitted automatically by operation of a statute, but as a result of the discretionary act of the Secretary of the Treasury, and indeed only if the President did not object. Discretionary acts of Department heads are subject to the President's control.

To believe that any amnesty power is vested in Congress raises a very serious constitutional issue, especially from the standpoint of certain of the bills under discussion.

In the Supreme Court case of *United States* v. *Klein* it appeared that Congress in 1862 authorized the President to offer pardons on such conditions as he might think advisable. In 1863, President Lincoln did exercise pardon authority. By statute, Congress subsequently declared those pardons inadmissible in evidence in certain cases. The Supreme Court held that statute unconstitutional, and in the course of its opinion, the Court characterized the 1862 law as merely a "suggestion of pardon by Congress, for such it was, rather than authority," and observed that President Lincoln in his annual message to Congress in 1863 informed it that, and I quote: "The Constitution authorizes the Executive to grant or withhold pardon at his own absolute discretion."

In other words, as I read what the President said and what the Supreme Court said, Congress itself had no power in this regard.

The courts have never squarely addressed the question whether Congress is precluded from granting amnesty if the President has decided against it or whether Congress may expand a grant of Presidential amnesty, or even whether Congress can extend amnesty, not only to persons awaiting prosecution, but also to offenders already convicted and sentenced.

The *Klein* rationale strongly suggests that Congress not only lacks the power to act where the President has exercised his pardoning power, but also where the President has decided not to grant executive clemency.

A further area of constitutional uncertainty is whether either the Congress or the President is authorized to grant amnesty or pardons for State offenses, as some of these bills propose. Given traditional concepts of federalism and the literal language of the pardoning power which is expressly limited to offenses against the United States, we do not believe that the reach of Federal clemency power can encompass State offenders.

Turning now to the current bills, House Concurrent Resolution 144 and House Concurrent Resolution 385 are identical. They express the sense of Congress that no pardon, reprieve, or amnesty be enacted by Congress or exercised by the President with respect to Vietnam war resisters. Although these resolutions do not have the force or effect of a statute, they do serve to direct attention to the constitutional problem. If this provision were enacted as a statutory directive it would purport to preclude the exercise of the President of his constitutional pardoning power. Therefore, it would be constitutionally defective.

In contrast, H.R. 674 leaves the decision whether to grant amnesty essentially in the hands of the President, thus avoiding this constitutional infirmity. Apart from the provision in the bill authorizing the President to grant amnesty to State offenders, the remaining portions of the bill, including those restoring the civil and political rights of war resisters and the citizenship of any of those who relinquished their citizenship in disapproval of the Vietnam war, present a question of whether Congress has any power to grant amnesty, and I doubt that it does.

H.R. 10980 and H.R. 10979 and H.R. 2167 are quite similar. Each provides for an amnesty on the condition that the recipient either enlist in the Armed Forces or perform 2 years of alternative public service. Both provide that persons convicted and serving sentences for draft evasion offenses are to be released and the remaining portions of their sentences excused if they accept similar conditions. This feature is an obvious usurpation of the President's pardoning power and also interferes with the power of the courts with respect to sentencing and probation. If Congress is authorized to release prisoners in this category what is to prevent the legislative branch releasing other types of offenders? It is for this reason that the pardoning power, certainly with respect to convicted persons, must lie exclusively with the President.

H.R. 236, H.R. 3100, and H.R. 5195 are identical, and are subject to similar objections. They provide for unconditional and automatic amnesty for any person who has violated the laws against draft evasion and desertion and for amnesty to be granted by an Amnesty Commission in other situations involving both Federal and State law violations.

These grants would extend to those already convicted and sentenced as well as to those not yet prosecuted, thereby certainly in the former respect invading the President's pardoning power.

Moreover, the bills also extend to State offenses, and finally, the scope of the rights attempted to be restored with the grant of amnesty appears too sweeping.

The inclusion of the term "property rights" is most troubling. It is well settled that a grant of clemency cannot affect rights that have been vested in others directly through the execution of the judgment imposed for the offense or which have been acquired by others while the judgment was outstanding.

It is clear that amnesty under these bills could not have the effect of divesting others of their property rights.

There is also a separate and very substantial constitutional infirmity in H.R. 236, H.R. 3100, H.R. 5195, and also in H.R. 10979, with respect to the Amnesty Commission established by these bills. The Commission

is to be composed of five members, one appointed by the President and the others by various Members of Congress. The functions of the Commission would not be merely to advise the President, but to affect the status of the persons involved. Its members, therefore, would be executing the laws and thus perform sovereign functions of the United States. Consequently, they would be officers of the United States in the constitutional sense and therefore, they must be appointed in a manner consistent with Article II, Section 2, Clause 2 of the Constitution.

Under that constitutional provision officers of the United States are to be appointed by the President by and with the advice and consent of the Senate. In the case of "inferior officers," Congress may authorize the appointment by the President alone, the courts of law or the heads of departments. The Constitution does not provide for the appointment of officers of the United States, other than congressional officers, by Congress or Members of Congress. Accordingly, appointments to the Amnesty Commission by Members of the Congress would be clearly constitutionally invalid.

In sum, Mr. Chairman, our analysis of these bills, other than the sense of Congress resolutions, discloses that each contains serious constitutional defects. For this reason alone the Department of Justice is obligated to oppose their enactment.

Mr. Chairman, that concludes my statement.

I will attempt to answer such questions as members of the subcommittee would wish to put.

Mr. KASTENMEIER. Thank you, Mr. Ulman.

The legislation before us would restore the civil rights to certain individuals convicted of crimes motivated by their opposition to the war. In your testimony you state that Congress cannot act where the President has decided not to grant executive clemency because it would encroach upon the President's power.

Just 3 or 4 weeks ago in this very subcommittee, the Justice Department testified on legislation whereby Congress would give the right to vote to ex-offenders. The Justice Department at that time did not take such a position; namely, that such legislation would encroach upon the President's right to grant this executive clemency which would restore a civil right.

I am wondering about that inconsistency, Mr. Ulman.

Mr. ULMAN. I do not believe that it is an inconsistency. Restoring the right to vote, it seems to me, is not a pardon, and therefore, I think the situations are different.

Mr. KASTENMEIER. In other words, is it your statement that as part of amnesty we could restore the right to vote to all individuals affected and you would not object to that, I take it?

Mr. ULMAN. I do not believe that the objection would be substantial, but I really have not thought about that aspect.

Mr. KASTENMEIER. Additionally, you state that Congress cannot interfere with the execution of criminal sentences for similar reasons, but it seems to me Congress has always done that. This Judiciary Committee has been asked to do it. We passed legislation setting the length of criminal sentences. We have before us legislation which would change the effect of parole determinations which certainly will affect sentences, and in fact, will have a mitigating effect. So I fail to see why we can act in one case and not in another.

Mr. ULMAN. Well, you are talking there about sentencing, and mitigating sentences, but I do not regard that as equivalent to a pardon. What you are doing here, it seems to me, is granting in effect a pardon for past offenses. You are just putting the individual in the position as though he had never committed an offense, which I think——

Mr. KASTENMEIER. There are some proposals to that effect.

Mr. ULMAN. I think it is quite different.

Mr. KASTENMEIER. But not completely.

I do not recall that you discussed provisions in at least two of the bills, H.R. 236 and H.R. 674, which provide that it is an immunity of United States citizens under the 14th amendment to enjoy the annulment of certain legal disadvantages. I would like your comments on those provisions insofar as these purport to remove any constitutional doubt as to whether Congress can act in this matter.

Mr. ULMAN. I do not believe that the privilege and immunities clause extends to that type of thing. I believe the privilege and immunities clause is simply a clause which relates solely to Federal rights of citizenship. I do not see that——

Mr. KASTENMEIER. These rights are partially affected here as well, are they not?

Mr. ULMAN. What rights?

Mr. KASTENMEIER. The rights of citizenship. This is part of the subject matter encompassed in the amnesty proposals.

Mr. ULMAN. Well, to the extent that you would consider—I thought that the privilege and immunities clause was designed to reach State offenders rather than Federal offenders. The 14th amendment provides that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

Mr. KASTENMEIER. One or two other questions before I yield to my colleagues.

I take it, Mr. Ulman, you are careful to discuss the status of the legislation from a legal standpoint as you see it. You consciously make no statement other than legal, with respect to the substantive merits of these proposals. You make no judgment on those questions, is that correct?

Mr. ULMAN. Well, my statement is certainly restricted to that.

Mr. KASTENMEIER. You may or may not care to answer this question, but has the Justice Department presented to the President in recent months its views on this question or has the Justice Department been consulted by the President on the question of amnesty?

Mr. ULMAN. My understanding is that the President has not changed his position.

Mr. KASTENMEIER. That is your understanding?

Mr. ULMAN. That is right.

Mr. KASTENMEIER. Thank you, Mr. Ulman.

I yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much, sir, for your testimony.

It would appear to me that the Department of Justice may well have said something to the contrary in the recent past. There was a bill proposed by Mr. Bevil that went to the House Armed Services Committee. This was a concurrent resolution, the bottom line of which said: "That it is the sense of Congress that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President

with respect to persons who have violated the Military Service Act," and so on. The Department of Justice, under date of May 7, 1973, said it had no objection to the enactment of this clause. If I may read it, this is specifically contrary to what you are telling us today. You say in May here, over the signature of Mike McKevitt, that you have no objection to Congress acting in the area when Congress would, by a concurrent resolution, deny all amnesty, and now you are telling us you do not feel we have any power at all. Here is the line. "In light of the Administration's view on amnesty as expressed by the President, we have no objection to the passage of House Concurrent Resolution 86 at this time."

Would you care to comment?

Mr. ULMAN. Yes. First of all, I had no knowledge of that letter.

Secondly, my view is that Congress does not have the power of granting amnesty. But what you are mentioning is a concurrent resolution against amnesty. But as I explained earlier, a concurrent resolution merely expresses the sense of Congress and does not have the force of law.

Mr. DRINAN. When you say you have no knowledge of that letter, you speak like the Pope or like the State Department when you say on page 6 here, "We do not read those cases." Who is "we"? If you have not heard of the letter who is "we"?

Mr. ULMAN. The Department of Justice.

Mr. DRINAN. Well, tell us more. Has the Attorney General approved your testimony?

Mr. ULMAN. I assume he has. He has not said that he disapproved it, therefore, I assume he has approved it.

Mr. DRINAN. I assume that he approved Mr. McKevitt's position, too.

Mr. ULMAN. I do not know, but I would assume so.

Mr. DRINAN. Nobody sees the contradiction?

Mr. ULMAN. I do not see—I would not say that on the basis of the two letters there is a contradiction.

Mr. DRINAN. There is or there is not a contradiction. You cannot have them both ways. It is like being pregnant, you are or you are not.

Mr. ULMAN. I can say this with the utmost confidence: I do not believe I am pregnant.

Mr. DRINAN. Is there a contradiction, for the record, say yes or no, between the letter of the Department of Justice of May 7 which the Attorney General saw and your testimony?

Mr. ULMAN. On the basis of what you tell me, I would agree that there appears to be a contradiction, but in any event the later testimony would seen to resolve the matter.

Mr. DRINAN. We are supposed to take the latter position just because it is later, even though it is contradictory.

In *Brown* v. *Walker*, you say that the operating sentence, the key sentence, is dictum. How did you reach that conclusion?

Mr. ULMAN. I reached that conclusion simply because the basic issue before the court was whether or not Congress could grant immunity in return for testimony, and the question of congressional power to grant amnesty is, I think, quite different.

Mr. DRINAN. Did Prof. Louis Lusky in his articles that you quote say that the particular very strong sentence in question was dictum?

Mr. ULMAN. I do not recall whether he said it was dictum, but my recollection is that his view was merely that it indicated that Congress had the power. He did not say Congress has the power.

Mr. DRINAN. But when you say that we do not read these cases to that effect, I assume you have some constitutional experts who have written contrary to Professor Lusky. Who are they?

Mr. ULMAN. The expert is myself.

Mr. DRINAN. Would you want to give us your credentials as an expert?

Mr. ULMAN. Yes, I have been in the Department of Justice for 30 years and have been handling constitutional questions for that length of time. I am Deputy Assistant Attorney General in the Office of Legal Counsel, one of whose principal functions is to consider constitutional questions.

I think from my standpoint, my credentials are as good as Professor Lusky's.

Mr. DRINAN. Have you testified before on amnesty?

Mr. ULMAN. No, I have not.

Mr. DRINAN. Have you ever written on amnesty?

Mr. ULMAN. No, I have not, other than my prepared statement.

Mr. DRINAN. Have you any credentials in the field of amnesty?

Mr. ULMAN. Yes, my study of the materials.

Mr. DRINAN. What other constitutional experts agree with you?

Mr. ULMAN. I do not know of any who do agree with me, nor apart from Professor Lusky, any who disagree with me.

Mr. DRINAN. Thank you very much.

I yield back my time.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. No questions.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Ulman, I appreciate your testimony.

For the record, you point out in your statement on page 3 that President Truman created, by Executive order, an Amnesty Board. Is there any move within the administration or any recommendation or thought concerning the issue of amnesty that an Amnesty Board should be established as an initial step?

Mr. ULMAN. I am not aware of any such thing.

Mr. MEZVINSKY. Would you have any comment as to whether that should be done?

Mr. ULMAN. No, I have no comment on that. I do not regard that as my function.

Mr. MEZVINSKY. Chairman Kastenmeier indicated when he raised the point concerning your statement that it is basically a legal argument and that it has nothing to do with the substantive merits. If the President would change his mind on the whole question of amnesty, do you think you would have the same position today?

Mr. ULMAN. On what question?

Mr. MEZVINSKY. If the President would say that I think we should consider this issue and deal with it and somehow attempt to resolve it, would you have the same position you are giving us today on the substantive basis?

Mr. ULMAN. Congress should deal with it or he should deal with it?

Mr. MEZVINSKY. Either one should deal with it.

Mr. ULMAN. If he should deal with it, I think there is no question that he has the constitutional authority to deal with it. If he should

say Congress should deal with it, I would think the constitutional questions remain. I would not expect him to say that.

Mr. MEZVINSKY. Do you think he should deal with it, Mr. Ulman?

Mr. ULMAN. That is beyond my competence.

Mr. MEZVINSKY. Again, have there been any recommendations, any memorandums, any papers directed to the President or within the Department on the substantive issue of dealing with the question of amnesty?

Mr. ULMAN. I think there are a number of prior reports that the Department has submitted which indicate that they are opposed to the granting of amnesty.

Mr. MEZVINSKY. Not on a constitutional basis?

Mr. ULMAN. No, on the merits.

Mr. MEZVINSKY. Let us get it clear. On the merits constitutionally or on the substantive or political reason?

Mr. ULMAN. On the substantive aspects.

Mr. MEZVINSKY. Thank you, Mr. Chairman. No further questions.

Mr. KASTENMEIER. Thank you, Mr. Ulman, for your testimony this morning.

My only comment would be that this committee, the House Judiciary Committee, and the Congress have been confronted in recent times with a series of questions for which precedent in terms of power, congressional and executive, have sometime been uncertain or in conflict. While we accept your testimony as representing the point of view of the Justice Department, it seems to me, viewed in terms of murky precedent and what might be a compelling need to act, we will have to independently come to a judgment as to whether or not we will in fact act in this area.

The Chair submits for inclusion in the record correspondence between this committee and the Department of Justice relating to amnesty.

[The correspondence referred to follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your inquiry of February 15, 1974, requesting statistical information on Draft Law violators, as well as any increase in case load, which may have been experienced by the Department since the termination on July 1, 1973, of the decade old policy which permitted certain delinquents to submit to induction in lieu of prosecution.

In response to your specific inquiries, I have provided answers in the order in which the inquiries were raised.

1. Departmental statistics reflect that the following individuals were convicted of draft law violations during the fiscal years indicated: 1963, 295; 1964, 243; 1965, 256; 1966, 366; 1967, 789; 1968, 884; 1969, 959; 1970, 1036; 1971, 1085; 1972, 1676; 1973, 1093; 1974,[1] 485.

2. The following is a statistical summary by fiscal year of individuals referred to the various United States Attorneys, nationwide, as Draft Law delinquents: 1963, 11,793; 1964, 13,589; 1965, 13,661; 1966, 13,835; 1967, 19,774; 1968, 21,331; 1969, 27,444; 1970, 26,475; 1971, 25,504; 1972, 20,091; 1973, 13,278; 1974,[1] 2,742.

3. At the end of calendar year 1973, there were 5,132 outstanding indictments against Selective Service delinquents. It is estimated that of this number, 4,600 individuals are fugitives.

[1] First 6 months of 1974.

4. The statistical information maintained by the Department does not contain a breakdown as to the nature of the violation reported by the United States Attorney. However, the General Counsel of the Selective Service System has provided us with what information he does have available on these violations. During calendar year 1972, there were 856 individuals reported to United States Attorneys, nationwide, for nonregistration or late registration; during calendar year 1973, 3,492 individuals were reported for these offenses. Selective Service does not have statistics for prior years.

5. There has been a slight increase in the number of cases during the six-month period since the termination of the Department's prosecutive policy on July 1, 1973, as compared with the preceding six months.

There were 548 trials between July 1, 1973 and December 31, 1973, and 507 trials between January 1, 1973 and June 30, 1973. Since July 1, 1973, there has been a decrease in the total number of indictments obtained as compared with the preceding six-month period. Between July 1, 1973 and December 31, 1973, 879 indictments were returned, whereas between January 1, 1973 and June 30, 1973, 1,713 indictments were returned. Although there has been an increase in the number of trials, and a converse decrease in the number of indictments since July 1, 1973 when the authority to induct expired and the Department's policy of offering defendants the opportunity to accept induction in lieu of prosecution terminated, I do not feel that these statistics represent a definitive trend because of the short period involved.

I trust that the foregoing will be of assistance, and if I may be of any service, please let me know.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General.

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS,
CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE,
OF THE COMMITTEE ON THE JUDICIARY,
February 15, 1974.

Hon. HENRY E. PETERSEN,
Assistant Attorney General, Criminal Division,
Department of Justice, Washington, D.C.

DEAR MR. PETERSEN: The Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the House Committee on the Judiciary, has scheduled public hearings for March 7 and 8 on several measures relating to amnesty for draft resisters and military deserters.

In order that the Subcommittee may be informed fully on the scope of the proposed legislation, I would appreciate your supplying us with answers to the following questions:

1. How many individuals have been convicted of Selective Service violations in each year since 1963?

2. How many individuals have been referred to the Department of Justice for prosecution as violators of the Selective Service Act in each year since 1963?

3. How many indictments for violation of the Selective Service Act are now pending?

4. Since the termination of induction authority on July 1, 1973, has there been an increase in the number of persons reported to the Department of Justice for failure to register? Please supply figures on an annual basis of such referrals for failure to register since 1963?

5. Has the termination of the Department's authority to offer defendant's the opportunity to accept induction in lieu of prosecution resulted in an increase in the number of indictments and trials of Selective Service violators?

I would appreciate hearing from you not later than March 1, 1974.

Sincerely yours,

ROBERT W. KASTENMEIER, *Chairman.*

Mr. KASTENMEIER. Thank you, Mr. Ulman.

Mr. ULMAN. Thank you.

Mr. KASTENMEIER. Our next witnesses this morning represent the American Civil Liberties Union, Henry Schwarzschild, director of the project on amnesty; and Mr. Arlie Schardt. Mr. Schwarzschild

is well known and has been of assistance in arranging for some of the witnesses to appear before this hearing. Mr. Schardt is associate director of the American Civil Liberties Union. He is well known to this committee, and he has recently coauthored a book entitled "Amnesty? the Unsettled Question of Vietnam."

Gentlemen, I welcome you here and you may proceed.

TESTIMONY OF HENRY SCHWARZSCHILD, DIRECTOR, PROJECT AMNESTY, ACLU FOUNDATION; ACCOMPANIED BY ARLIE SCHARDT, ASSOCIATE DIRECTOR, ACLU, AND COAUTHOR, "AMNESTY, THE UNSETTLED QUESTION OF VIETNAM"

Mr. SCHWARZSCHILD. Thank you, Mr. Chairman.

I am grateful to the committee for having invited the American Civil Liberties Union to present its views on the issue of amnesty.

For over 50 years, since its very founding, the American Civil Liberties Union has pleaded for amnesty for those who have come into conflict with national war policies and wars, with draft and military laws. In its more recent consideration of the subject of amnesty, the Board of Directors of the American Civil Liberties Union adopted a policy resolution, dated February 20, 1973, which reads as follows:

> Those who face or have suffered criminal or administrative penalties for nonviolent acts of evasion or resistance to the draft or to the military or to the war, involving violations of laws and regulations, including especially the selective service law and the Universal Code of Military Justice, and have done so during the era of the War in Southeast Asia, should be granted a full and unconditional amnesty.

The country has finally been able to bring some aspects of the war in Southeast Asia to a close. We have begun, after a fashion, to make peace with our former enemies in Hanoi, Peking, and Moscow. Is it not time that we also make peace with our sons, with ourselves? Must that "peace of healing," of which we heard at the time of the cease-fire agreements, not also mean the healing of the wounds that we inflicted upon our own citizens? Is it not time to stop making victims in the context of that catastrophic experience called the Vietnam war? We have brought home the prisoners of war and the wounded, and we have reunited with their families the men who fought that tragic war for us. Must we not also now reunite with their families and with their country the men and women who have accepted many years of severe hardship out of the conviction that the war was not in the interest of our country?

We join in the concerns expressed recently by a group of distinguished American citizens in speaking about amnesty:

> Can Congressmen and members of the administration, both present and former ones, who put us into the war and who kept us in it so long, have it in their hearts to absolve themselves while they hurt these young men?
>
> Can those Congressmen who opposed the war, in the way the public empowered them to do, want to hurt those powerless men who opposed the war in the only ways *they* could or knew how, men who in the process helped create and sustain that public disgust with the war which finally gave some success to Congressional effort to end it?
>
> We believe that Congress and the President are, in fact, fully free to act for amnesty, and that they cannot rightfully claim to be held back by constituents' pressures. We believe amnesty, as was segregation in the South, is an issue wherein statesmen would not trade on fears but can, and therefore should, lead.

We believe that the people will respond helpfully to forthright leadership, as did people in the South when segregation was outlawed.

We believe that if Congress or the President will give the American people the opportunity to be generous and just, the Nation will be so. We ask for that opportunity. Does this nation, that was established to "form a more perfect union" and to "insure domestic tranquility," not want to heal itself? Do we not want to take this chance on justice?

There are few acts a government can decide upon that clearly and immediately benefit individuals; amnesty would be one. We think it would be even more. We would be saying to ourselves that we now put the Vietnam war behind us, with its terrible freight of bitterness and recrimination, and of corruption and brutality too. We would signal a decisive turning away from the darkness of the war years, and toward rebuilding and restoring and healing, both here and, as we are morally bound to do, in Indochina. We also would be affirming to ourselves that America has no time or need for vengeance against ourselves, and especially not against our youth. We would, instead, be welcoming the return, as free members of a freer society, of young men who can give much to the future—theirs and ours and our country's.

It will be useful, I trust, if I address my remarks to the historical and human context in which the American Civil Liberties Union demand for amnesty is made, to some of the constitutional and legal issues presented by amnesty, to the categories and numbers of people who would be affected by a universal and unconditional amnesty, to why we believe that only an amnesty that is both universal and unconditional will meet the test of political justice and human decency, and finally to the problem of what is to be said to the understandable but erroneous response of those who believe mistakenly that an universal and unconditional amnesty would destroy a lawful and orderly society or would dishonor the millions of men and women who served their country in the war in compliance with the law.

The U.S. Government's war in Southeast Asia tore up the countries and peoples of Indochina for an entire decade. It wreaked enormous havoc also in our own country. The war divided our society, deepened our bitterness, aggravated our violence-prone disposition, diverted our attention and resources into destructive channels, and forced millions of young men to choose between either obedience to the law or their own sense that this was a useless war in which to kill others or to be killed.

The war imposed its hurt and tragedy very broadly, if not equitably, on the young generation of Americans, the millions of men of draft age during that terrible decade.

What is often ignored is that the overwhelming majority of men who were of military age during the Vietnam era did not serve in the military. It is simply factual poppycock to suggest that everyone gave 2 years of his life to the country in that troubled period of our history, and that, therefore, the war resisters should not get off scot-free. Fewer than 11 percent of the draftable manpower pool was ever drafted. Millions of men found quasi-legal avenues of escape from the draft, the military, and the war, a war in which hardly anyone wanted to fight. Almost every young man whose parents were rich enough to send him to college and get him a 2–S deferment, escaped the draft; the lottery protected many of the others. Men by the tens of thousands hid out from the war in medical and psychiatric deferments, in technical and athletic excuses, in the ministry, the Peace Corps, in the teaching and other professional enclaves. Indeed, the very ROTC

and the National Guard were havens from the battlefield of Vietnam for thousands. By and large, it was left to the ill informed and the luckless to fight this dirty war for us.

The vast majority of the military manpower came from a last two categories, and these were in greatly disproportionate numbers from among the poor, the ill educated, and the minority communities. It is men from the "lower status" elements of our society (to use Dr. Kenneth B. Clark's phrase) who were drafted in greater numbers, were assigned in greater numbers to the frontline fighting units and to unskilled and dead-end military jobs, they were wounded and killed in greater numbers, abused by the system of military discipline and justice, and finally ejected from the military machinery in greater numbers with less-than-honorable discharges and other "bad paper" that blight the rest of their lives. This country owes redress to them as well as to the war resisters.

The constitutional power of the President to grant amnesties by Executive proclamation is founded on the clause in Article II, Section 2, that entitles the President "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." It has been used repeatedly by Presidents throughout our history, from President George Washington to President Harry Truman. The Library of Congress, Legislative Reference Service, has compiled the particulars of the 17-or-so amnesties that have been granted in our troubled history. Our historical experience and the U.S. Supreme Court agree that the Congress of the United States also has a concurrent power to enact amnesty legislatively (see Harvard International Law Review, vol. 13, No. 1, winter 1970), which, if the committee is not familiar with, I shall gladly submit to the committee for its examination.

Amnesty may be defined as a "discretionary decision by a sovereign government not to raise the issue of whether a class of its citizens have violated the laws in a political conflict." Amnesty is, in its nature, not forgiveness nor approval or ratification of the acts being amnestied; it simply is the means, hallowed by our law and tradition, by which the society decides to wipe out its formal, legal memory of the acts. It is a measure of social reconciliation after severe political conflict. Amnesty today would not necessarily be a ratification of war resistance or draft refusal or desertion, any more than a pardon for a convicted felon suggests approval of the crime of which he stands convicted. It is a way of ending conflict and pain and hurt where there has been enough of that already.

The American Civil Liberties Union urges that all penalties, whether criminal or administrative in nature, that arise from nonviolent acts of resistance to the draft, the military, and the war, be extinguished by a universal and unconditional amnesty, including at least the following:

(1) Draft violators: Over 7,500 men were convicted of draft violations committed during the Vietnam era. In many instances, they were harshly sentenced by Federal courts as though they represented a danger to the society more acute than criminals of violent disposition and self-seeking criminal conduct. Draft violators continue to be vigorously prosecuted and sentenced even today, notwithstanding the cease-fire and the end of inductions under the draft. The number

of indictments pending for such draft violations fluctuates but remains very substantial even today. The process of identifying draft delinquents in the files of the Selective Service System continues, and so do referrals of such delinquents to the Department of Justice for prosecution. Draft delinquency, we must remember, is the failure to notify the draft board of a change of address, for example. The punishment for draft violations, we must also remember, is 5 years and a $10,000 fine on each count. Literally hundreds of thousands of young men in their teens and twenties are in jeopardy of prosecution under the draft law (and will be until the statute of limitations runs out for them). These are the men who simply did not register when they turned 18. It is difficult to say just how many men escaped the war and the draft by that means, but it is useful to realize that the Director of the Selective Service System reported last year that, in his judgment, in excess of 10 percent of the men who became 18 in the calendar year 1972 did not register. Since over 2 million men reach that threshold every year, that means 200,000-plus draft violators in that single year of 1972 alone.

As the committee is aware, the Department of Defense reported almost 500,000 cases of desertion from fiscal year 1965 through early fiscal 1973. Half a million men! What testimony to a demoralized military in a divided country. Obviously, most of those deserters returned voluntarily or by apprehension, the number of deserters who remain at large is far smaller. The number of deserters at large, according to Defense Department figures, has hovered around the 30,000 mark for several years. But these official figures are themselves subject to considerable doubt. As was shown by Robert Musil in his article, "The Truth About Deserters" (The Nation, Apr. 16, 1973), the Department of Defense statistics issued annually during the Vietnam years indicate a total number of about 135,000 deserters at large. The refusal of the Department of Defense to explain the discrepancy between their annual personel reports and the figures now being used gives rise to melancholy speculations about a "body count" which falsifies the truth and refuses to account for some 100,000 young American men who were in the control of the U.S. military forces. Draft violators tend to be men—most often white, middle class, and well educated—who decided in good time that they could not serve the war. Deserters are men who had less opportunity to formulate ahead of time their personal or moral or ideological attitude, and who learned from the real-life experience of the dehumanization, the oppression, the racism, and the insanities of the war in Vietnam.

They are in more striking proportion men from among the poorly educated, the economically less well off, and the minority.

The third category, the exiles. By the best judgment we can make and the figures are very difficult indeed to be precise about, there are somewhere in the neighborhood of 30,000 to 50,000 young American war resisters in exile abroad.

Over the years, I have had fairly sustained contact with the exile community of war resister Americans, particularly in Canada where most of them reside, and have been told that exile is by and large a distressingly oppressing form of resistance and does not constitute acts of, or of a signally courageous witness to the appalling experience of the war and to the need to end it.

Mr. KASTENMEIER. Mr. Schwarzschild, you only have a minute or two left. Does Mr. Schardt wish to conclude?

Mr. SCHARDT. I would rather have Mr. Schwarzschild finish.

Mr. SCHWARZSCHILD. There are, as you have heard, some almost 500,000 veterans of the Vietnam era with less-than-honorable discharges. Almost all of them issued administratively, not as a result of court-martial, but as a result of conviction of even military offenses. Again, they primarily are from the lower elements of our society and they are in effect being punished doubly for that terrible experience of the war. First, by the serious dislocation and disorientation of their lives, and now for the rest of their careers and lives.

There are also some half million men who were court-martialed during the Vietnam era purely for military offenses. We believe that those felony records, which in effect is what they are, ought to be expunged by universal, unconditional amnesty.

Let me say finally to the committee, that the amnesty that we believe is the just and fair act for this country to proceed with, must be universal, must apply to all those cases of people without distinction, and must be unconditional. It makes no sense in the future interest of this country to impose additional punishment to those years that these men and women have spent either in the military or underground in their own country or in prison or in exile. It seems to us that the only thoughful, generous, human, and politically just measure is to let them return to their own country, their families, and their careers, with honor and without the sense that they have been guilty of acts which are socially destructive, which they clearly were not. They are the men who refused to commit the violence of the Vietnam era, and it seems to me incumbent upon this country to enact as promptly as possible a measure guaranteeing unconditional amnesty for those who suffered the disadvantages and disabilities of the war by reason of their war resistance.

Mr. KASTENMEIER. Thank you for a most eloquent statement, Mr. Schwarzschild. Your statement will appear in the record in its entirety.

[The statement follows:]

STATEMENT OF HENRY SCHWARZSCHILD, DIRECTOR, PROJECT ON AMNESTY, AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Mr. Chairman, members of the subcommittee, my name is Henry Schwarzschild; I am the director of the project on amnesty of the American Civil Liberties Union. I am accompanied today by Mr. Arlie Schardt, Associate Director of the Washington Office of the American Civil Liberties Union. Mr. Schardt is the coauthor with Senator Mark O. Hatfield of Oregon and William A. Rusher of the magazine National Review of a new book entitled "Amnesty, the Unsettled Question of Vietnam."

I am grateful to the Committee for having invited the American Civil Liberties Union to present its views on the issue of amnesty. I appeared on this question precisely two years ago before the Senate's Subcommittee on Administrative Procedure and Practice, chaired by Senator Edward Kennedy. The country and the world have undergone such radical changes that the subject of amnesty could not possibly be more ripe for action by the United States.

For over fifty years, since its very founding, the American Civil Liberties Union has pleaded for amnesty for those who have come into conflict with national war policies and wars, with draft and military laws. In its most recent consideration of the subject of amnesty, the Board of Directors of the American Civil Liberties Union adopted a policy resolution (dated February 20, 1973) which reads as follows:

"Those who face or have suffered criminal or administrative penalties for non-violent acts of evasion or resistance to the draft or to the military or to the war, involving violations of laws and regulations, including especially the selective service law and the Universal Code of Military Justice, and have done so during the era of the War in Southeast Asia, should be granted a full, broad, and unconditional amnesty."

It will be useful, I trust, if I address my remarks to the historical and human context in which the ACLU demand for amnesty is made, to some of the constitutional and legal issues presented by amnesty, to the categories and numbers of people who would be affected by a universal and unconditional amnesty, to why we believe that only an amnesty that is both universal and unconditional will meet the test of political justice and human decency, and finally to the problem of what is to be said to the understandable but erroneous response of those who believe mistakenly that an universal and unconditional amnesty would destroy a lawful and orderly society or would dishonor the millions of men and women who served their country in the war in compliance with the law.

CONTEXTUAL CONSIDERATIONS

The United States Government's war in Southeast Asia tore up the countries and peoples of Indochina for an entire decade. It wreaked enormous havoc also in our own country. The war divided our society, deepened our bitterness, aggravated our violence-prone disposition, diverted our attention and resources into destructive channels, and forced millions of young men to choose between either obedience to the law or their own sense that this was a useless war in which to kill others or to be killed.

The war imposed its hurt and tragedy very broadly, if not equitably, on the young generation of Americans, the millions of men of draft age during that terrible decade. The primary victims were, of course, the men who died or were wounded in the war. To them and to their families, and indeed to the eight million veterans of the Vietnam era this society owes far more redress than it has even attempted to provide. We have become a nation that evidently considers an adequate level of medical, educational and social services to the veterans an inflationary danger but the piling up of additional nuclear weapons and B–1 bombers a virtue. Those who obeyed the demands of our Government and gave years, limbs and even their life to that war require an amnesty from this country, too, for the sacrifices which they continue to make in the disorientation and the disadvantages in their lives caused by the war.

What is often ignored is that the overwhelming majority of men who were of military age during the Vietnam era did *not* serve in the military. It is simply factual poppycock to suggest that everyone gave two years of his life to the country in that troubled period of our history and that therefore the war resisters should not get off scot-free. Fewer than 10% of the draftable manpower pool was ever drafted. Millions of men found quasi-legal avenues of escape from the draft, the military and the war, a war in which hardly anyone wanted to fight. Almost every young man whose parents were rich enough to send him to college and get him a 2–S deferment escaped the draft; the lottery protected many of the others. Men by the tens of thousands hid out from the war in medical and psychiatric deferments, in technical and athletic excuses, in the ministry, the Peace Corps, in the teaching and other professional enclaves. Indeed, the very ROTC and the National Guard were havens from the battlefield of Vietnam for thousands. By and large, it was left to the ill-informed and the luckless to fight this dirty war for us.

The men who served in the military in the Vietnam era really fall into four classes: (1) career military men and women, (2) men in the Reserves who miscalculated their chances of escaping the draft and the war by their Reserve connection, (3) involuntary draftees, impressed by means of the Selective Service System, and (4) enlistees who hoped to get a better assignment by voluntarily joining up before they got drafted. The vast majority of the military manpower came from the last two categories, and these were in greatly disproportionate numbers from among the poor, the ill-educated, and the minority communities. It is men from the "lower status" elements of our society (to use Dr. Kenneth B. Clark's phrase) who were drafted in greater numbers, were assigned in greater numbers to the front-line fighting units and to unskilled and dead-end military jobs, they were wounded and killed in greater numbers, abused by the system of military discipline and justice, and finally ejected from the military machinery in

greater numbers with less-than-honorable discharges and other "bad paper" that blight the rest of their lives. This country owes redress to them as well as to the war resisters.

CONSTITUTIONAL AND LEGAL CONSIDERATIONS

The Constitutional power of the President to grant amnesties by executive proclamation is founded on the clause in Article II, Section 2, that entitles the President "to grant reprieves and pardons for offences against the United States, except in cases of impeachment." It has been used repeatedly by Presidents throughout our history, from President George Washington to President Harry Truman. The Library of Congress, Legislative Reference Service, has compiled the particulars of the 17-or-50 amnesties that have been granted in our troubled history. Our historical experience and the United States Supreme Court agree that the Congress of the United States also has a concurrent power to enact amnesty legislatively (see i.a. Harvard International Law Review, Vol. 13, No. 1, Winter 1970). These very hearings reconfirm the Congress' conviction that amnesty is within its province, and there is ample legal authority indeed for that assertion.

Amnesty may be defined as "a discretionary decision by a sovereign government not to raise the issue of whether a class of its citizens have violated the laws in a political conflict." Amnesty, then, is discretionary—i.e., there is no constitutional right or legal entitlement to amnesty. Amnesty is similar in that respect to pardon, but pardon relates to a single individual while amnesty affects whole classes of people, and pardon mitigates further punishment for someone who stands convicted of an offense, whereas amnesty means a decision not even to raise the question of criminal culpability on the part of that class of citizens. Amnesty is, in its nature, not forgiveness nor approal or ratification of the acts being amnestied; it simply is the means, hallowed by our law and tradition, by which the society decides to wipe out its formal, legal memory of the acts. It is a measure of social reconciliation after severe political conflict. Amnesty today would not necessarily be a ratification of war resistance or draft refusal or desertion, any more than a pardon for a convicted felon suggests approval of the crime of which he stands convicted. It is a way of ending conflict and pain and hurt where there has been enough of that already.

CATEGORIES AND NUMBERS OF PEOPLE AFFECTED

The ACLU urges that all penalties, whether criminal or administrative in nature, that arise from non-violent acts of resistance to the draft, the military, and the war be extinguished by a universal and unconditional amnesty, including at least the following:

(1) *Draft violators.* Over 7,500 men were convicted of draft violations committed during the Vietnam era. In many instances, they were harshly sentenced by federal courts as though they represented a danger to the society more acute than criminals of violent disposition and self-seeking criminal conduct. Draft violators continue to be vigorously prosecuted and sentenced even today, notwithstanding the cease-fire and the end of inductions under the draft. The number of indictments pending for such draft violations fluctuates but remains very substantial even today. The process of identifying draft delinquents in the files of the Selective Service System continues, and so do referrals of such delinquents to the Department of Justice for prosecution. Draft delinquency, we must remember, is the failure to notify the draft board of a change of address for example. The punishment for draft violations, we must also remember is five years and $10,000 on each count. Literally hundreds of thousands of young men in their teens and twenties are in jeopardy of prosecution under the draft law (and will be until the statute of limitations runs out for them). These are the men who simply did not register when they turned 18. It is difficult to say just how many men escaped the war and the draft by that means, but it is useful to realize that the Director of the Selective Service System reported last year, in his judgment, in excess of 10% of the men who became 18 in the calendar year 1972 did not register. Since over 2,000,000 men reach that threshold every year, that means 200,000-plus draft violators in that single year of 1972 alone!

(2) *Deserters.* The Department of Defense reported 495,689 cases of desertion from Fiscal Year 1965 through early Fiscal 1973. Half a million men! In one year alone (1971), the Defense Department reported just short of 100,000 men as deserters. What testimony to a demoralized military in a divided country.

Obviously, most of those deserters returned voluntarily or by apprehension, the number of deserters who remain at large is far smaller. The number of deserters at large, according to Defense Department figures, has hovered around the 30,000 mark for several years. But these official figures are themselves subject to considerable doubt. As was shown by Robert Musil in his article "The Truth About Deserters" (The Nation, April 16, 1973), the DOD statistics issued annually during the Vietnam years indicate a total number of about 135,000 deserters at large. The refusal of DOD to explain the discrepancy between their annual personnel reports and the figures now being used gives rise to melancholy speculations about a "body count" which falsifies the truth and refuses to account for some 100,000 young American men who were in the control of the United States military forces. Draft violators tend to be men—most often white, middle class, and well educated—who decided in good time that they could not serve the war. Deserters are men who had less opportunity to formulate ahead of time their personal or moral or ideological attitude, and who learned from the real-life experience of the military and the war that they would not give their bodies and the lives to that war. The myth that deserters are men who leave their buddies under fire is, of course, false.

A striking number of the deserters are men who served honorably in Vietnam, and many of them have medals for their heroism in battle. They are men upon whom the realization dawned precisely from their combat experience that the killing made no sense, that the American people did not know what it was good for, and that they could not figure out to what end they were destroying several countries and their populations with whom we had no quarrel and who represented no conceivable threat to the security of our country. A good many others found the racism and the dehumanization of the military so oppressive, especially in the context of the war, that they left, finding all the enormous difficulties and risks of desertion, underground or exile life, more bearable and moral than their continuing involvement in the military and the war.

(3) *Exiles.* Whatever their number, exiles are men who, being draft resisters or deserters, live abroad because they do not believe that war resistance in the Vietnam era was a criminal act which this country is entitled to punish. They refuse to acknowledge a "guilt" for acts of humanity that would land them in the stockade or penitentiary if they returned to this country.

There are an estimated 30,000 to 50,000 American war-resister exiles abroad, the overwhelming majority of them in Canada, with small groups of them in France, England, Sweden, and other countries around the globe. Far from "deserting the country," they are men so profoundly troubled by what the country has been doing to the world and to itself and by what it proposed to do to them, that they felt expelled from their own society under threat of severe punishment for their stand against the war. Exiles are not men who wanted to avoid the consequences of their acts of war resistance. They have already spent many years of their lives away from their family, their friends, their education, their careers, the culture, their country. They have suffered the legal, economic, and psychic burdens of exile, of not knowing whether they could ever return to their own country without draconian punishment for acts which do not warrant punishment. Socrates, it will be remembered, had the choice between exile and death, and preferred the cup of hemlock to the bitterness of exile! Without a universal and unconditional amnesty, the United States will create a large class of American political refugees abroad—for the first time in our history since we expelled the Tories from New England at the time of the American Revolution.

(4) *Court-martial convictions.* During the Vietnam era, some 550,000 G.I.'s were court-martialed for purely military offenses that are not crimes in a civilian context. About half of all the courts-martial trials were for absence offenses, about another tenth for obedience offenses, others for those peculiarly vague charges (such as conduct tending to bring discredit upon the armed forces, and the like) that are the hallmark of military justice. The proportion of minority group G.I.'s court-martialed was many times the ratio of white G.I.'s. Court-martial convictions are the equivalent of felonies in civilian life.

Here, then, are hundreds of thousands of men, involuntarily drafted into the service, discriminatorily punished for offenses which have no standing under the Constitution or in our ordinary criminal code, who will carry with them for the rest of their lives the stigma and disabilities of being convicted felons. We believe that this stigma is unwarranted and intolerable. Note that we do not here advocate amnesty for offenses tried by military courts that are ordinary crimes—no one is talking about amnesty for murder or assault or embezzlement or rape. We are talking about purely military offenses.

(5) *Less-than-honorable discharges.* About 450,000 Vietnam era veterans have "bad paper," less-than-honorable discharges from the military, almost all of them "administrative" discharges given not as a consequence of court-martial sentence but in effect arbitrarily imposed by military command decision. In extraordinarily disproportionate numbers, they were given to men from the "lower status" elements of our society, the poor, the ill-educated, and the minority communities. The disabilities created by these "bad" discharges include deprivation of veterans benefits, lack of access to veterans' hospitals, disqualifications for federal, state and local civil service jobs, inability to receive various kinds of licenses and professional accreditation, and severe employment discrimination in private business and industry. These men, almost half a million of them, served their country in compliance with the law.

Their reward is life-long dual punishment—the years of their lives taken by the military with all the hardships involved, plus the bad discharge, which will haunt them in many ways throughout their careers. An amnesty for them means a greatly increased and decent level of educational, medical, and other social services, and a general upgrading of discharges, so that the arbitrary command decisions will not hamper the development of their lives as citizen-veterans. There can be no justification for "administrative discharges" and for Separation Processing Numbers on discharges that visit life-long punishment, without due process, on the men who served their country. One uniform Certificate of Service, testifying to the mere fact of military service, is in order. If there are criminal charges to be preferred against a member of the military, let those be adjudicated, but let there not be double punishment (court martial sentence *and* a life-long bad discharge) or arbitrary punishment (administrative discharge) for those from whom we have already demanded years of their lives.

(6) *Civilian resisters and protesters.* In increasing numbers during the long years of the war, citizens by the thousands registered their dissent, frustration and outrage at the continuing slaughter in Southeast Asia. Thousands, indeed ten of thousands, were arrested in protest demonstrations and other acts whose sole purpose was to demand the end of the killing. Citizens were arrested in the course of lawful and constitutionally protected demonstrations, even if they were not themselves participants in the demonstrations; they were arrested for other acts which gave symbolic expression at their desperation about the endless war. The charges ranged from petty misdemeanors (trespass, disorderly conduct, and the like) all the way to allegations of espionage and conspiracy. Justice demands that a full amnesty, including expungement of criminal records, be given also to those men and women who spoke to the conscience of the nation in ways infinitely less destructive and brutal than was the conduct of that tragic war.

UNIVERSAL AMNESTY

All the categories of resisters to the draft, the military, and the war must be amnestied. That is to say: the amnesty must be universal, without distinction as to category of war and draft resistance. The amnesty must be granted to all of them *as a class*, not on a case-by-case examination of the subjective motivations for their acts of war resistance. Amnesty means a *class pardon* means not repeating the tragic, wasteful, and discriminatory process of case-by-case review for which the bad precedent is the Truman Amnesty Board of 1947, which turned amnesty into a flagrant process of discrimination on grounds of race, class, and religious affiliation. Case-by-case review inevitably means a process of granting amnesty to the articulate, who can persuade some tribunal of their decent motivation, and discriminating against the inarticulate (that is to say: primarily the the ill-educated, the poor, the minority-group resister). Resistance to that war was not an offense that we are entitled to forgive only if we approve of the motives that prompted the resistance. It ill behooves this Congress to urge searching enquiry into the motivations of those who took one committed stand on the war or another.

UNCONDITIONAL AMNESTY

The amnesty must be unconditional, i.e. not contingent upon the performance by these amnestees of some other "service" to the Government. All these men have already spent years of their lives in jail, in underground life in our own country, in exile abroad, or in the military services themselves. Their lives have been profoundly disarranged and distorted by the war, and their suffering has been as great as the service they have rendered our nation. No purpose can

possibly be served by demanding that these young men spend time in some Government-sponsored or supervised form of allegedly socially constructive labor. Alternative service is punishment—punishment for humane and self-sacrificing service to the highest ideals of the nation. The best thing this country can do for its young sons after the traumas of the war is to let them return to their own lives, unhindered by the heavy hand of Government. We are conscious of the reports that a great many Americans who support amnesty for the war resisters of the Vietnam era believe that alternative service conditions should be attached to such an amnesty. But such conditions are in conflict with the very nature of amnesty, which is the society's deciding to set aside the divisive and conflicted history of the past. Many Americans are beginning to understand that the war resisters *have* served, in ways at least as honorable as military service and that additional demands made of them and their lives are mere vindictiveness.

LAW AND ORDER

The specter is often raised that the granting of an amnesty would destroy the concept of a lawful society. Amnesty, it is said, would suggest that citizens may choose which laws to obey and which to violate, that one may break the law with impunity. But amnesty, being a lawful enactment within the pure discretion of the Executive or Legislative Branches of Government, sets no precedent and does not prospectively encourage anyone to violate the law. A presidential pardon for someone convicted of violating the federal jury tampering statute does not encourage others to violate that same statute in the confident expectation that he, too, will be presidentially pardoned. The same holds true for amnesty. If amnesty did set a binding precedent, this Subcommittee and we would not be here, because the amnesty we seek would come about as a natural consequence of the many amnesties that American history records, from President Washington's amnesty for those involved in the Whiskey Rebellion, through the post-Civil War amnesties for the political and military leadership of the Confederacy, to our own modern times. The war resisters and veterans of the Vietnam era did not come into conflict with the draft and military laws because they knew they would escape punishment by means of an amnesty. They, along with millions of their fellow citizens and many of our political and military leaders, believed so strongly that the war was wrong, that they were willing to risk the consequences of their action.

The question now before the country is whether it is in the interest of the society to punish their acts. The decline of respect for law, of which many complain, is in large part due to the blatant unlawfulness of so many acts of this Government and its leaders in connection with the war and in connection with other aspects of public life. The enactment by the Congress of a universal and unconditional amnesty, or its grant by a President of the United States, would begin to create once more a sense in many of our citizens, especially of the younger generation, that the law is not an instrument of repression and control but can be used for the benefit of the society and its members. It would enhance, not destroy, respect for the law.

FAIRNESS AND EQUITY

It is sometimes said that amnesty would dishonor the sacrifices of those men who fought and died in the war, that amnesty would violate every sense of fairness and equity by letting the war resisters get off scot-free when so many other men made severe sacrifices. But amnesty would imply no dishonor to those who served and fought and died. The war resisters themselves respect the decisions made by other men to obey the law and to do what the Government and the law demanded. They know that, in the ordinary course of events, citizens obey the law and do what the country seems to say they ought to do. They know that those who served and fought also became victims of the war, that many of the G.I.'s participated in the military and the war with grave reservations and profound distaste, that the veterans today feel ill-used and ignored by America.

The Vietnam veterans know that the years of their lives would not be restored to them by punishing the war resisters, their bodies would not be made whole, their buddies not brought back to life. Vietnam veterans all over the country have said to me that they did what they thought they had to do, but that they respect and admire those who refused. Privately, many Vietnam veterans will say that, if they had to do it all over again, they too would go to Canada. We

believe that the veterans and the American people would gladly acquiesce if the political and moral leadership would say to the American people: Let us not have recriminations in our country over who was right and who was wrong about the war at the cost of the decent lives of tens of thousands of our sons.

CONCLUSION

The country has finally been able to bring some aspects of the war in Southeast Asia to a close. We have begun, after a fashion, to make peace with our former enemies in Hanoi, Peking and Moscow. Is it not time that we also make peace with our sons, with ourselves? Must that "peace of healing," of which we heard at the time of the Cease Fire Agreements, not also mean the healing of the wounds that we inflicted upon our own citizens? Is it not time to stop making victims in the context of that catastrophic experience called the Vietnam war? We have brought home the prisoners of war and the wounded, and we have reunited with their families the men who fought that tragic war for us. Must we not also now reunite with their families and with their country the men and women who have accepted many years of severe hardship out of the conviction that the war was not in the interest of our country?

We join in the concerns expressed recently by a group of distinguished American citizens in speaking about amnesty:

"Can Congressmen and members of the administration, both present and former ones, who put us into the war and who kept us in it so long, have it in their hearts to absolve themselves while they hurt these young men?

"Can those Congressmen who opposed the war, in the way the public empowered them to do, want to hurt those powerless men who opposed the war in the only ways *they* could or knew how, men who in the process helped create and sustain that public disgust with the war which finally gave some success to Congressional effort to end it?

"We believe that Congress and the President are, in fact, fully free to act for amnesty, and that they cannot rightfully claim to be held back by constituents' pressures. We believe amnesty, as was segregation in the South, is an issue wherein statesmen would not trade on fears but can, and therefore should, lead. We believe that the people will respond helpfully to forthright leadership, as did people in the South when segregation was outlawed.

"We believe that if Congress or the President will give the American people the opportunity to be generous and just, the nation will be so. We ask for that opportunity.

"Does this nation, that was established to 'form a more perfect union' and to 'insure domestic tranquility,' not want to heal itself? Do we not want to take this chance on justice?

"There are few acts a government can decide upon that clearly and immediately benefit individuals; amnesty would be one. We think it would be even more. We would be saying to ourselves that we now put the Vietnam war behind us, with its terrible freight of bitterness and recrimination, and of corruption and brutality too. We would signal a decisive turning away from the darkness of the war years, and toward rebuilding and restoring and healing, both here and, as we are morally bound to do, in Indo-China. We also would be affirming to ourselves that America has no time or need for vengeance against ourselves, and especially not against our youth. We would, instead, be welcoming the return, as free members of a freer society, of young men who can give much to the future—theirs and ours and our country's."

Mr. KASTENMEIER. I note that in referring to the Truman Amnesty Board of 1947, and the process of case-by-case review, you term it a flagrant process of discrimination. So I take it, this is one of the reasons you support universal and unconditional amnesty because anything short of it tends to discriminate on its face; is that correct?

Mr. SCHWARZSCHILD. On the face of it and in the actual process. On the face of it, because any requirement that the war resisters justify their acts; the subjective, personal religious, moral ideological bona fide acts of their war resistance would inevitably produce a distinction not between those who are well motivated and those who are not, but between the articulate who can make out a cogent case,

a systematic world view about killing and war as against those who are inarticulate, and cannot make out their case to some tribunal. This is further compounded by the elements of race and education in our society.

Mr. KASTENMEIER. I am wondering, because the classes you describe are so sweeping and the numbers who are affected so great, how you feel about those swept up in these classes who are really not war-related; at least not in terms of war resistance or conscience. I am referring to many of the deserters who are in that category because they have committed other crimes that had nothing to do with how they felt about the war. Would these people, too, be amnestied in the same proposal?

Mr. SCHWARZSCHILD. No; the amnesty you referred to does not relate to ordinary crimes. We do not suggest that people charged or found guilty of murder, assault, embezzlement, or rape be amnestied. We believe those are civil proceedings and the present law requires they be tried in military court.

We are talking about amnesty for war and military and draft-related offenses. Not all of those necessarily are in some sense of the word consciously related to the war. But an attempt to distinguish the personal, subtle complicated motivations for acts that will, by the time they get around to being examined, lie 5 or 10 years in the past, seems to us so useless and so inherently impossible and hurtful, and it seems to us that in any case, nothing is gained by the distinction, because the acts themselves were not hurtful to the society. It seems to us that here is a particularly appropriate place for us to apply that old dictum that it is better that many guilty men should go free rather than let one innocent man be punished.

War resistance, it seems to us, does not require a showing of some ideology or some morality that commends itself to a tribunal. That war, given its dubious morality and dubious constitutionality meant that valid resistance and motivation were entirely proper.

Mr. KASTENMEIER. However, if you feel those who have committed other crimes that are really unrelated to the war should not be included, someone must make the distinction. Do you not still require some sort of amnesty board to make the distinction between those that would be affected and those who would not be?

Mr. SCHWARZSCHILD. We do not believe so, Mr. Chairman, because the amnesty ought to be written so as to amnesty possible violations of specific sections of the United States Code. Murder and embezzlement and so forth, would not be subject to that amnesty. Violation of the Selective Service Act or of that specific paragraph of the Uniform Code of Military Justice that relates to absence or obedience offenses or desertion, would be subject to that amnesty.

I think the distinction is rather easily drafted and, indeed, some of the proposed legislation before this committee begins to make very significant and worthwhile attempts at making those distinctions.

Mr. KASTENMEIER. Of the legislative proposals before our committee, which ones do you support?

Mr. SCHWARZSCHILD. Mr. Chairman, I am in no position to support any one bill or another. I would say that the closer the proposed legislation comes to a universal and unconditional amnesty for all those classes of men who continue to be victimized in the context of law; the closer a bill comes to that desired objective, the more earnestly do we recommend its earliest adoption.

But we do not believe at the present time, any of the proposed legislation really meets that test, though some obviously come closer than others.

Mr. KASTENMEIER. Do you and Mr. Schardt believe that Congress has, without question, the power to legislate in this area?

Mr. SCHWARZSCHILD. Yes, sir, we do, and the legal literature of the recent years states that very eloquently. There is a very substantial bibliography on the law of amnesty dealing with the congressional power to enact amnesty legislatively. In any case, it goes without saying that any act of the Congress in order to become effective as law, including amnesty legislation, would require the signature of the President. The Congress could of course, pass it over the President's veto, but I believe that is not a very likely proposition.

The constitutional power of the Congress to act on amnesty was established in the 19th century and the Supreme Court has spoken to it and endorsed that power. We have no doubt about that at all, and as I say, I shall be honored if the chairman will give me permission to submit a number of relevant scholarly articles on that subject for its recommendation.

Mr. KASTENMEIER. The Chair will be pleased to receive those treatises or statements, and Mr. Schardt, you agree?

Mr. SCHARDT. Absolutely; yes.

[The articles referred to appear at pp. 56–156.]

Mr. KASTENMEIER. I yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Thank you, Mr. Schwarzschild, for your contribution here.

In the event that Congress were to decide to pass an amnesty bill that contained—a board, an amnesty board to review on a case-by-case decision, would you personally, not particularly speaking for your organization, be willing to accept that in lieu of no kind of amnesty?

Mr. SCHWARZSCHILD. Sir, I think the answer is that the prospect of an amnesty board having before it these hundreds of thousands of cases and attempting to make distinctions about the validity and conscientiousness and the acceptability of the motives of these men is so appalling and so impossible and useless, that I think I would have to say in answer to your question that the kind of amnesty we advocate is really in conflict with that prospect. We believe that it ought to be the courageous political decision of our political leadership to resolve the problems of war resistance and of victimization by the military of the Vietnam era generation by its own action, and not to pass this problem on to tribunals all over the country that would attempt, as the draft boards did for years, to make a distinction which they were clearly not competent to make about the morality and the conscience of hundreds of thousands of our sons.

Mr. SMITH. Your answer is no, then, I take it?

Mr. SCHWARZSCHILD. Yes, sir.

Mr. SCHARDT. I would second that just on the very simple ground that I do not see how you could do that without simply duplicating all the discrimination that was already inflicted by draft boards throughout the entire period of our participation in the war.

Mr. SMITH. There would be that possibility, of course.

Of course, I expect there was some discrimination by draft boards. By and large, though, my experience was that they are made up of people who felt a responsibility to their communities and attempted within the limits of their conscience to do a good job. In spite of the best of intentions and so forth, I am sure there were times when there were discriminations made. But I would like to raise a voice in honor of and in defense of the hundreds and thousands of men and women who sat on draft boards and tried to do a job as their conscience led them into it.

Mr. SCHARDT. I agree that there were many, many Americans who served to the best abilities of their conscience in trying to make the draft work, but I think the evidence refutes that to the extent that the system itself just simply did not work. There were so many enormous loopholes with which those members were operating to begin with, that the inevitable result was discrimination regardless of the sincerity or conscientiousness with which members were performing their duties.

Mr. SMITH. I would have to say that there probably was here and there discrimination, because human beings were trying to make judgments and decisions, and I think in a large measure you will always find that human beings attempting to make judgments and decisions, sometimes will not be exactly evenhanded, even though they intend to be and they want to be and they try to be.

Thank you very much.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much, Mr. Schwarzschild, for your fine testimony.

I wonder if you would spell out the word "concurrent" as noted on page 6 of your testimony. As you read it, the Congress and the President have concurrent power to enact amnesty. Would you spell that out a bit?

Mr. SCHWARZSCHILD. Yes. We believe that the Presidential power to enact amnesty by Executive action alone is so clearly derivable from Article II, Section 2, of the Constitution, that that has never been seriously challenged. I think the classic doctrine in western jurisprudence is that the pardoning power and, therefore, the amnesty power, which is a kind of class pardon, resides in the sovereign States. Clearly, in traditional European terms that meant the King was above the law and the source of the law and, therefore, had the power to set the law aside.

Obviously, the Constitution has done away with monarchy in this country. Precisely where the sovereignty resides, where are the locations of that sovereignty, is much more difficult to define than in classical monarchy terms.

I believe the accepted view is that the sovereignty remains in the United States with that branch of the Government which incorporates some of the sovereignty for certain purposes. The Congress of the United States also incorporates acts of sovereignty of the United States and, therefore, has acted in the past as its right to do as the sovereign power of the United States, and the Supreme Court in cases cited in the legal literature has endorsed that power that the Congress has asserted, particularly in the 19th century, to enact

amnesty. So when we say "concurrent" we mean there is an equal power.

Mr. DRINAN. Are there any analogs in other areas? Is this unique? I am trying to make it clearer as to any other area.

Mr. SCHWARZSCHILD. I am not sure, Congressman Drinan. I do not know.

Mr. DRINAN. It would be helpful if you or Mr. Schardt could find material on that because the word "concurrent" is a new one, really.

Mr. SCHWARZSCHILD. It is not meant to be a technical term, Father Drinan. It means both the President and the Congress have equal powers to act.

Mr. DRINAN. On page 12 you mention all the disabilities that come to these people. I wonder if you could give us your view on a bill that could be enacted by the Congress that would say all of the 450,000 of the Vietnam veterans that have less than honorable discharges should have by an act of Congress their discharge papers turned into this certificate of service that you recommend? Would you feel this would be constitutional? In other words, the Congress would say that notwithstanding their discharge they shall have veteran's benefits, access to veteran's hospitals, et cetera—would you feel that is within the power of Congress to do?

Mr. SCHWARZSCHILD. I do, indeed, because the veterans' benefits and the like derives from a system wherein the Congress obviously has power to legislate classes of discharges and of veterans' benefits so the reopening to these benefits and change to a uniform certificate of military service would be within the power of Congress.

Mr. DRINAN. We are not seeking to do indirectly what we do not have the full power to do directly?

Mr. SCHWARZSCHILD. I am not quite sure I follow that, sir. I believe you would be doing it directly rather than indirectly if you legislated a uniform certificate of service.

Mr. DRINAN. Would not the President say we are invading his powers? We are forgiving or forgetting the offenses for these almost a half million who were denied benefits?

Mr. SCHWARZSCHILD. Most of those. So that question does not even precisely arise in this context, with a very tiny proportional exception of those veterans, their discharges are administrative discharges and would not.

Mr. SCHARDT. May I make one point?

In addition to those cases, there were cases of men who never even went through the courts martial process but took some sort of administrative punishment. Most of these men are subject to crippling effects in civilian life which resulted from something that happened within the military context. That type of discharge deprives them of an opportunity to get jobs, or credit, or insurance, or certain types——

Mr. DRINAN. I think every Member of Congress is well aware of that. These people make up some of our best pen pals.

On page 19 I would request that you identify these distinguished American citizens who gave this statement on amnesty. Just for the record, I would like to have their names.

[The document entitled "Statement on Amnesty" appears at p. 328.]

As legislators, we have to think about the nuts and bolts, and that

these people, let us say the 450,000 Vietnam veterans have to apply to somewhere to get their papers altered.

You suggest, and I see your logic, that you do not want a review board. But presently these men have to apply to the military. If they have a less than honorable discharge they have to get a clean piece of paper. Do you want the Congress to spell out rules to the military so we do not have a rerun of what went on before?

Mr. SCHARDT. I am not sure what agency would be the appropriate one.

Mr. DRINAN. You have to have an agency?

Mr. SCHARDT. To administer the processes, but it obviously ought to be done as simply as possible. Additionally, there should be an exchange of papers so they can show a uniform certificate of military service to prospective employers. It could be an exchange of papers without very much administrative difficulty. It probably ought not be the military, but what agency might be appropriate, I am not prepared to define.

Mr. DRINAN. This, I think, would be very helpful to us. We would like to know where they should go if they try to exchange their papers.

Thank you very much, sir.

Mr. KASTENMEIER. The gentleman from Iowa.

Mr. MEZVINSKY. Mr. Schwarzschild, I was interested in your testimony. You have made it very clear that you feel that unconditional amnesty is the position that should be taken, that it should be granted in a very simple way, and that the creation of an amnesty board is briefly, not the answer. Then, let us move one step up. You point out on page 15 that you are conscious that the public is more attuned to the idea of a public service. If the option is alternative public service or nothing at all, would the position hold? Would you then oppose that position as well?

Mr. SCHWARZSCHILD. Congressman, we must and we ought to oppose that. It seems to me this Congress ought to, also. Alternative service is seen as a lesser form of punishment for acts which we do not believe warrant punishment at all. These men took very severe consequences in their lives over their decision not to participate in the war. Most of them, I think, find the notion unacceptable that this Government has the right to exact anything further from them arising from the Vietnam war. So a conditional amnesty bill, besides being morally objectionable, would also be ineffectual and would not accomplish that reentry into society of these people that it is designed to achieve.

Mr. MEZVINSKY. Then, for the record, can you explain how we would distinguish between a conscientious objector who felt the same way about the war and fell under alternative public service and one who seeks amnesty. I think that distinction should be explained for the record.

Mr. SCHWARZSCHILD. Do I understand you to ask why it was appropriate for conscientious objectors to do alternative service but not——

Mr. MEZVINSKY. I am saying during the war there were many opposed to the war some of whom were successful in getting a CO status. You had a situation of those who were opposed to the war but fulfilled the alternative public service requirement. Now we are saying those who were opposed to the war and chose other alternatives, either

going off to Canada or other places, should find themselves with unconditional amnesty.

Mr. SCHWARZSCHILD. I believe that is quite consistent. The American Civil Liberties Union is very troubled with alternative service for conscientious objectors. But some of the CO's, as you know, refused to perform alternative service and suffered in prison. But those who did do alternative service would be the last to object to unconditional amnesty. They did not think alternative service was useful, or appropriate for the Congress of the United States to impose upon their lives. I am confident that the war resisters and the CO's themselves during the Vietnam era endorse uniformly the notion of an unconditional amnesty because they do not want to see more of the years of the lives of the war resisters wasted in what will be described as constructive social service, but will really be irrelevant make-work normally, and what is in any case, of very dubious constitutionality inasmuch as there is no national emergency that would empower the Government to tell these young men how to spend their lives—what to do with the years of their lives.

I do not believe there is an inconsistency, and I do not believe the CO's themselves would find one.

Mr. SCHARDT. During the American participation in Vietnam itself there was no other alternative other than alternative service, but amnesty does provide another alternative or option now.

Mr. MEZVINSKY. Thank you. I appreciate your comments and testimony.

Thank you.

Mr. SMITH. Mr. Chairman, could I ask one question?

Mr. KASTENMEIER. Yes.

Mr. SMITH. Mr. Schwarzschild, the chances are we probably have so many people who were resisters during the Korean war and probably some deserters of the Korean war. Would you include those people in general amnesty?

Mr. SCHWARZSCHILD. Indeed, there are still resisters from the World War II period who were not pardoned. We believe as a matter of historical justice and equity, the amnesty ought to include war resisters from all the wars we have had. As you are aware, some years after every major war some act was taken that wipes away the remaining disabilities of those who came in conflict with the laws during the war. It was not until the Truman administration that those of the World War II period were amnestied. We believe with the larger numbers involved and the more political divisiveness of the Vietnam war, that action ought to come now so as not to continue to hurt the lives of our young sons. But we would include people from previous wars as well.

Mr. SMITH. So the qualifier is, not whether it is a good war or bad war, but whether someone did not want to go for whatever motive?

Mr. SCHWARZSCHILD. Hardly anyone doubted the unavoidability and perhaps the morality of World War II, and yet this country at the hands of President Truman found it possible to grant a broad amnesty.

How much more true must it be that in a war which was so dubious and so divisive and so catastrophic for the world and the American people that the amnesty ought to come promptly and in an unconditional fashion. It is true that the war resisters of all the wars have

been fewer in number than in the last decade of our history. This reinforces our conviction that war resisters ought to be amnestied because that war was such a ghastly and terrible experience for all of us.

Mr. SMITH. Thank you.

Mr. KASTENMEIER. Thank you both, Mr. Schwarzschild and Mr. Schardt, for your contributions here this morning.

[The articles referred to at p. 50 follow:]

AMNESTY: AN ACT OF GRACE

JULIAN C. CAREY

Reprinted from
SAINT LOUIS UNIVERSITY LAW JOURNAL
Vol. 17, No. 4, Summer, 1973

AMNESTY: AN ACT OF GRACE

"We must not permit a single American to be drafted and sent to fight in the jungles of Indo-China."

William E. Jenner
Senator from Indiana
April 20, 1954[1]

Since Senator Jenner's admonition, the United States Government has sent in excess of 3.3 million American men to fight in Indochina.[2] It has buried over forty-five thousand of them and treated the wounds of hundreds of thousands more.[3] It has waged an unprecedented and unparalled bombing campaign against Laos, Cambodia, and Vietnam,[4] creating a sub-culture of refugees and maimed civilians.[5] It has prossecuted and jailed those who refused to participate in the war in Indochina.[6] And it has forced many more of them into exile.[7] Allegedly the war in Indochina has ended but the conflicts and contradictions in the United States Government's involvement compounds.

On July 30, 1969, at Saigon, Vietnam, President Richard Nixon declared, "I think that history will record that this may have been one of America's finest hours."[8] Less than four months later America's finest hour was profaned when Paul Meadlo, a former private in the U.S. Army (Americal Division), told a CBS-TV interviewer of his recollections of Vietnam:

> There was about forty or forty-five people that we gathered in the center of the village . . . men, women, children . . . babies. And we all huddled them up . . . Lieutenant Calley . . . started

---

1. W. Effros, Quotations Vietnam: 1945-1970 at 16 (1970).
2. Letter from Joseph J. Lofrano, Commander, USN, Chief, Southeast Asia Division, Directorate for Defense Information to Jack Carey, February 20, 1973, on file at the *St. Louis University Law Journal.*
3. *Id.*
4. *See* R. Littauer & N. Uphoff, The Air War in Indochina (rev. ed. 1972); Indochina Resource Center, Air War The Third Indochina War (1972); St. Louis Post Dispatch, April 25, 1973, § A, at 9, col. 5.
5. *See* F. Branfman, Voices From the Plain of Jars Life Under an Air War (1972); Staff of Senate Comm. on the Judiciary, 91st Cong., 2d Sess., Refugee and Civilian War Casualty Problems in Indochina (Comm. Print 1970); Staff of Senate Comm. on the Judiciary, 92d Cong., 2d Sess., War Victims in Indochina (Comm. Print 1972); *Hearings Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees, Problems of War Victims in Indochina,* 92d Cong., 2d Sess. (1972) (pt. 1: Vietnam; pt. 2: Cambodia and Laos).
6. *See* American Report, May 7, 1973, at A-7, cols. 1-4.
7. *See* R. Williams, The New Exiles (1971); N.Y. Times, Feb. 5, 1970, at 8, col. 4; Newsweek, Feb. 15, 1971, at 28; Newsweek, Jan. 17, 1972, at 19; Time, Jan. 10, 1972, at 15.
8. W. Effros, Quotations Vietnam: 1945-1970 at 152 (1970).

> shooting them. And he told me to start shooting. So I started shooting, I poured about four clips into the group . . . I fired them on automatic . . . you just spray the area . . . so you can't know how many you killed . . . I might have killed ten or fifteen of them . . . so we started to gather them up, more people, and we had seven or eight people . . . we put them in the hootch, and we dropped a hand grenade in there with them . . . they had about seventy or seventy-five people all gathered up. So we threw ours in with them and Lieutenant Calley . . . started pushing them off and shooting . . . off into the ravine. It was a ditch. And so we just pushed them off, and just started using automatics on them . . . men, women, children . . . and babies . . . after I done it, I felt good, but later on that day it was gettin' to me . . . It just seemed like it was the natural thing to do at the time. . . .[9]

Indochina continues to be a paradox for most citizens. The United States Government declares that it is halting aggression, while its own actions take the form of an aggressor.[10] The Government declares that we are saving Southeast Asia, while reports indicate that we are destroying it.[11] The Government maintains that we are supporting democratic nations, while those very governments jail political opponents, close newspapers, and conduct fraudulent elections.[12]

Caught within this maelstrom of political, legal, and moral contradictions is the war resister. Depending upon one's point-of-view on Indochina, the war resister, both the draft dodger and the deserter, is either a traitor, one who refused to serve his country in time of need and should be punished; or he is one who displayed most effectively and selflessly the illegality and immorality of the government's foreign policy in Indochina and should be thanked. With the assertions that the government has ended its involvement in Indochina, thoughts are being directed toward the war resister.[13]

---

9. *Id.* at 153-54; *see* S. HERSH, MY LAI 4 (1971).

10. *See* VIETNAM VETERANS AGAINST THE WAR, THE WINTER SOLDIER INVESTIGATION: AN INQUIRY INTO AMERICAN WAR CRIMES (1972); T. TAYLOR, NUREMBERG AND VIETNAM: AN AMERICAN TRAGEDY (1971).

11. *See* R. LITTAUER & N. UPHOFF, THE AIR WAR IN INDOCHINA 91, 241 (rev. ed. 1972); J. LEWALLEN, ECOLOGY OF DEVASTATION: INDOCHINA (1971); B. WEISBERG, ed., ECOCIDE IN INDOCHINA (1970); St. Louis Post-Dispatch, Aug. 5, 1972, § A (editorial) at 4, col. 2: "Defense Department figures cited by Congressional Quarterly indicate that from the beginning of 1965 through May of this year the United States expended 27 billion pounds of munitions in North and South Vietnam, Laos and Cambodia. That amounts to 542 pounds of explosives for every inhabitant and 97,000 pounds for every square mile. It does not include herbicides dumped on more than 5,700,000 acres of forest and crop land or 750,000 acres of land cleared by bulldozers. All this has been done by a modern, enlightened, industrial country to a small Asian peasant society. What did Indochina do to deserve this? Perhaps someone in Washington has an answer." *See also* Pfeiffer and Westing, *Land War, Three Reports*, 13 ENVIRONMENT 2 (1971).

12. *See* H. BROWN & D. LUCE, HOSTAGES OF WAR SAIGON'S POLITICAL PRISONERS (1973); L. TRI & M. MCNABB, AID TO THIEU (1972); N.Y. Times, March 27, 1973, at 1, cols. 6-7; N.Y. Times, March 27, 1973, at 2, cols. 1-3; THE GUARDIAN, September 18, 1971, at 6.

13. *See* Freeman, *An Historical Justification and Legal Basis for Amnesty Today*, 1971 LAW & SOC. ORDER 515; Gosfield, *Legal Status of American War Resisters Abroad*, 5 INT'L LAW AND POLITICS 503 (1972); Jones & Raish, *American Deserters and Draft Evaders: Exile, Punishment or Amnesty?* 13 HARV. INT'L L.J. 88 (1972); Wick, *The Case for an Unconditional, Universal*

The question is, does one grant an amnesty to those who followed the philosophy of the Senator's declaration and refused to fight in Indochina?

"Now, therefore, be it known that I . . . President of the United States of America, by virtue of the power and authority vested in me by the Constitution, do hereby proclaim and declare without reservation or condition, a full and complete pardon and amnesty to all persons." With words similar to these, presidents have granted amnesty to rebellious citizens, pirates, political prisoners, Confederate soldiers, American Indian Nations, polygamous Mormons, Philippine Nationalists, ex-convicts, deserters, and draft resisters.[14]

Amnesty for Draft Evaders and Armed Forces Deserters, 22 BUFFALO L. REV. 311 (1972); St. Louis Post-Dispatch, March 18, 1973, § (pictures), at 16; St. Louis Post Dispatch, April 4, 1973, § B, at 1, cols. 1-2; St. Louis Post Dispatch, May 7, 1973, § E, at 5, cols 1-7.

14. Harvey, *Proposal To Bring the Outcasts Home Without Punishment*, Vol. 118, CONG. REC. S9256 (*daily ed.* June 13, 1972). Mr. Harvey includes in his article the following list of amnesties in American history, including date, issued by, persons affected, and nature of action:

July 10, 1795, Washington, Whiskey Insurrectionists (several hundred). General pardon to all who agree to thereafter obey the law.

May 21, 1800, Adams, Pennsylvania Insurrectionists. Prosecution of participants ended. Pardon not extended to those indicted or convicted.

October 15, 1807, Jefferson, Deserters given full pardon if they surrendered within four months.

Feb. 7, 1812, Oct. 8, 1812, June 14, 1814, Madison, Deserters—3 proclamations. Given full pardon if they surrendered within 4 months.

Feb. 6, 1815, Madison, [Barrataria] pirates who fought in War of 1812 pardoned of all previous acts of piracy for which any suits, indictments or prosecutions were initiated.

June 12, 1830, Jackson (War Department), Deserters, with provisions: (1) those in confinement returned to duty, (2) those at large under sentence of death discharged, never again to be enlisted.

Feb. 14, 1862, Lincoln (War Department), Political prisoners paroled.

July 17, 1862, (Confiscation Act), Congress, President authorized to extend pardon and amnesty to rebels.

March 10, 1863, Lincoln, Deserters restored to regiments without punishment, except forfeiture of pay during absence.

Dec. 8, 1863, Lincoln, Full pardon to all implicated in or participating in the 'existing rebellion' with exceptions and subject to oath.

Feb. 26, 1864, Lincoln (War Department), Deserters' sentences mitigated, some restored to duty.

March 26, 1864, Lincoln, Certain rebels (clarification of Dec. 8, 1863, proclamation).

March 3, 1865, Congress, Desertion punished by forfeiture of citizenship; President to pardon all who return within 60 days.

March 11, 1865, Lincoln, Deserters who return to post in 60 days, as required by Congress.

May 29, 1865, Johnson, Certain rebels of Confederate States (qualified).

July 3, 1866, Johnson (War Department), Deserters returned to duty without punishment except forfeiture of pay.

Jan. 21, 1867, Congress, Section 13 of Confiscation Act (authority of President to grant pardon and amnesty) repealed.

Sept. 7, 1867, Johnson, Rebels—additional amnesty including all but certain officers of the Confederacy on condition of an oath.

July 4, 1868, Johnson, Full pardon to all participants in 'the late rebellion' except those indicted for treason or felony.

Dec. 25, 1868, Johnson, All rebels of Confederate States (universal and unconditional).

May 23, 1872, Congress, General amnesty law reenfranchised many thousands of former rebels.

While the subject is not foreign to American history, few current subjects elicit a greater spectrum of response than that of amnesty toward the war resister. Some favor giving him an unconditional amnesty; others would deny amnesty entirely, and still others would grant amnesty with certain conditions precedent.[15] Amnesty itself is not a complex subject. The innumerable responses, however, from various segments of the citizenry make amnesty an extremely sensitive topic.[16] Rather than attempt to explore all facets of the spectrum, this comment will examine the judiciaries' involvement with the amnesty question when it reached the courts and will offer an argument for an unconditional amnesty for all war resisters.

I. Amnesty: A Greek Term Meaning Forgetfullness or Oblivion

The judiciary has played an extremely important role in defining amnesty, in judging the constitutionality of amnesty, in declaring who is eligible for amnesty, and in examining under what conditions amnesty is allowed.

Article II, § 2 of the Constitution of the United States reads, in part, the President "shall have the Power to grant Reprieves and

---

May 24, 1884, Congress, Lifted restrictions on former rebels to allow jury duty and civil office.

Jan. 4, 1893, Harrison, Mormons [Church of the Latter Day Saints]—liability for polygamy amnestied.

Sept. 25, 1894, Cleveland, Mormons—in accord with above.

March, 1896, Congress, Lifted restrictions on former rebels to allow appointment to military commissions.

June 8, 1898, Congress, Universal Amnesty Act removed all disabilities against all former rebels.

July 4, 1902, T. Roosevelt, Philippine insurrectionists. Full pardon and amnesty to all who took an oath recognizing 'the supreme authority of the United States of America in the Philippine Islands.'

June 14, 1917, Wilson, 5,000 persons under suspended sentence because of change in law (not war-related).

Aug. 21, 1917, Wilson, Clarification of June 14, 1917, proclamation.

March 5, 1924, Coolidge, more than 100 deserters—as to loss of citizenship for those deserting since WW I armistice.

Dec. 23, 1933, F. Roosevelt, fifteen hundred convicted of having violated espionage or draft laws (World War I) who had completed their sentences.

Dec. 24, 1945, Truman, several thousand ex-convicts who had served in WW II for at least one year.

Dec. 23, 1947, Truman, 1,523 individual pardons for draft evasion in WW II based on recommendations of President's Amnesty Board. [The Board reviewed the cases of 15,805 alleged offenders. Of the 1,523 pardoned all had been convicted and had served part or all of their sentence.]

Dec. 24, 1952, Truman, Ex-convicts who served in armed forces not less than 1 year after June 25, 1950.

Dec. 24, 1952, Truman, All persons convicted for having deserted between August 15, 1945, and June 1950.

[In addition, treaties with the Indian Nations frequently contained a general amnesty for all past offences against the laws of the United States, e.g., Treaty with the Cherokee Indians, July 19, 1866; Treaty with the Choctaws and Chickasaws, April 28, 1866; Treaty with the Creek Indians, July 4, 1866.]

15. *See* Newsweek, January 17, 1972, at 20.

16. *See* St. Louis Post-Dispatch, March 9, 1973, § A, at 9, col. 1.

Pardons for Offences against the United States, except in cases of Impeachment."[17] Mr. Chief Justice Marshall expounded upon article II, § 2, and provided the often quoted definition of an executive pardon:

> The Constitution gives to the president, in general terms, 'the power to grant reprieves and pardons for offences against the United States.'
>
> As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it.
>
> A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate . . . .[18]

In a later decision, Mr. Justice Wayne added that pardon "[I]s forgiveness, release, remission. Forgiveness for an offence, whether it be one for which the person committing it is liable in law or otherwise."[19] He went on to note that historically, "A pardon is said by Lord Coke to be a work of mercy, whereby the king, either before attainder, sentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical."[20] Citing similar historic precedent, a later court declared, "A pardon is an act of mercy flowing from the fountain of bounty and grace; its effect, when it is a full pardon, is to obliterate every stain which the law attached to the offender, to place him where he stood before he committed the pardoned offense, and to free him from the penalties and forfeitures to which the law had subjected his person and property . . . ."[21]

In *Ex parte Garland*,[22] the Court attempted to distinguish between pardon and amnesty:

> It may be said generally, we think, that pardon is usually granted to an individual; amnesty to a class of persons, or to a whole community.
>
> Pardon usually follows conviction, and then its effect is to remit the penalty. Amnesty usually precedes, but it may follow trial and conviction, and its effect is to obliterate the past, to leave no trace of the offence, and to place the offender exactly in the position which he occupied before the offence was committed, or in which he would have been if he had not committed the offence.[23]

---

17. U.S. CONST. art. II, § 2.
18. United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833).
19. *Ex parte* Wells, 59 U.S. (18 How.) 307, 309 (1855).
20. *Id.* at 311.
21. United States v. Athens Armory, 24 F. Cas. 878, 884 (No. 14,473) (N.D. Ga. 1868); *see* Osborn v. United States, 91 U.S. 474 (1875).
22. 71 U.S. (4 Wall) 333 (1866).
23. *Id.* at 351.

Furthermore, the Court declared that the power to pardon was unlimited and that,

> A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.[24]

A state court[25] discriminated further between pardon and amnesty, arguing that pardon is usually granted by the crown or the executive, while amnesty is usually granted by Parliament or the Legislature:

> Pardon and amnesty are not precisely the same. A pardon is granted to one who is certainly guilty, sometimes before, but usually after conviction. And the court takes no notice of it, unless pleaded, or in some way claimed by the person pardoned; and it is usually granted by the crown or by the executive. But amnesty is to those who may be guilty, and is usually granted by Parliament, or the Legislature; and to whole classes, before trial. Amnesty is the abolition or oblivion of the offense; pardon is its forgiveness.[26]

The federal court, however, was unwilling to make the distinction of a pardon and amnesty. The Court in *U.S. v. Klein*,[27] for example, expressly stated, "To the executive alone is intrusted [sic] the power of pardon; and it is granted without limit. Pardon includes amnesty."[28]

Mr. Justice Field argued that to seek a distinction between a pardon and an amnesty is to pursue a study of linguistics:

> Some distinction has been made, or attempted to be made, between pardon and amnesty. It is sometimes said that the latter operates as an extinction of the offence of which it is the object, causing it to be forgotten, so far as the public interests are concerned, whilst the former only operates to remove the penalties of the offence. This distinction is not, however, recognized in our law. The Constitution does not use the word 'amnesty'; and, except that the term is generally employed where pardon is extended to whole classes or communities, instead of individuals, the distinction between them is one rather of philological interest than of legal importance.[29]

He added,

> A pardon is an act of grace by which an offender is released from the consequences of his offence, so far as such release is practicable and within control of the pardoning power, or the officers under its direction. It releases the offender from all disabilities imposed by the offence, and restores to him all his civil rights. In con-

24. *Id.* at 380-81.
25. State v. Blalock, 61 N.C. 242 (1867).
26. *Id.* at 247.
27. 80 U.S. (13 Wall) 128 (1871).
28. *Id.* at 147.
29. Knote v. United States, 95 U.S. 149, 152-53 (1877).

> templation of law, it so far blots out the offence, that afterwards it cannot be imputed to him to prevent the assertion of his legal rights. It gives to him a new credit and capacity, and rehabilitates him to that extent in his former position. But it does not make amends for the past. It affords no relief for what has been suffered by the offender in his person by imprisonment, forced labor, or otherwise; it does not give compensation for what has been done or suffered, nor does it impose upon the government any obligation to give it.[30]

Finally, in *Brown v. Walker*,[31] the Court asserted, "The distinction between amnesty and pardon is of no practical importance."[32]

A pardon or amnesty, moreover, can be of a particular type or class. As Mr. Justice Wayne denoted in *Ex parte Wells*,[33]

> They are general, special, or particular, conditional or absolute, statutory, not necessary in some cases, and in some grantable of course. Sometimes, though, an express pardon for one is a pardon for another, such as in approver and appellee, principal and accessary in certain cases, or where many are indicted for felony in the same indictment, because the felony is several in all of them, and not joint, and the pardon for one of them is a pardon for all, though they may not be mentioned in it; or it discharges sureties for a fine, payable at a certain day, and the king pardons the principal; or sureties for the peace, if the principal is pardoned, after forfeiture.[34]

Mr. Chief Justice Marshall in *U.S. v. Wilson*[35] advised that "A pardon may be conditional; and the condition may be more objectionable than the punishment inflicted by the judgment . . . . [The pardon] may be absolute or conditional."[36]

An amnesty or pardon restores to the one receiving it his or her complete civil rights. One who wishes to have property rights restored, however, often fails. For once a judicial sale is made by the court with proper jurisdiction, the sale is complete, even though judgment might later be reversed for error:

> Neither does the pardon affect any rights which have vested in others directly by the execution of the judgment for the offence, or which have been acquired by others whilst that judgment was in force. If, for example, by the judgment a sale of the offender's property has been had, the purchaser will hold the property notwithstanding the subsequent pardon. And if the proceeds of the sale have been paid to a party to whom the law has assigned them, they cannot be subsequently reached and recovered by the offender. The rights of the parties have become vested, and are as complete as if they were acquired in any other legal way.[37]

Such a situation has been infrequent because an amnesty has often stated as a condition precedent that the grantee disclaim any reversionary interest in the property once owned. For example, Lin-

---

30. *Id.* at 153-54.
31. 161 U.S. 591 (1895).
32. *Id.* at 601.
33. 59 U.S. (18 How.) 307 (1855).
34. *Id.* at 310.
35. 32 U.S. (7 Pet.) 150 (1833).
36. *Id.* at 161.
37. Knote v. United States, 95 U.S. 149, 154 (1877).

coln's proclamation of December 8, 1863, granted a full pardon to those who "participated in the existing rebellion . . . with restoration of all rights of property, except as to slaves, and in property cases where rights of third parties have intervened. . . . ".[38] The only way in which one pardoned could regain control of the contested property would be if the property had not vested in a third person but instead remained under the control of the executive, his officers, or a judicial tribunal:

> Where, however, property condemned, or its proceeds have not thus vested, but remain under control of the Executive, or of officers subject to his orders, or are in the custody of the judicial tribunals, the property will be restored or its proceeds delivered to the original owner, upon his full pardon. The property and the proceeds are not considered as so absolutely vesting in third parties or in the United States as to be unaffected by the pardon until they have passed out of the jurisdiction of the officer or tribunal.[39]

Thus, the judiciary defined a pardon or an amnesty as an act of grace, a forgiveness for an offence, an act of mercy. The attempt to differentiate between a pardon and an amnesty, the former being granted by the executive to an individual, the latter being granted by the legislature to a class, is not firmly established in judicial decisions. And to attempt to distinguish between the two is to seek a distinction without a difference:

> In respect to the claim that 'amnesty is a larger power than pardon,' it is difficult to conceive how amnesty, which by any recognized definition is no more than a grant of entire freedom from a penalty or the consequences of a crime, can be of any higher significance or effect than a full and complete pardon for the same crime, or how it can differ from such a pardon in its nature, extent, effect, or application.[40]

A. *Authority to Pardon*

The political history of the republic could lead one to conclude that the framers of the Constitution intended to vest in the executive the power to grant a pardon for offences against the United States. James Madison's Journal provides some of the constitutional history of article II, § 2:

> Saturday, August 25th
>
> Mr. Sherman moved to amend the 'power to grant reprieves and pardons,' so as to read, 'to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate.'
>
> On the question,—Connecticut, aye,—1; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—8.

---

38. By the President of the United States of America: A Proclamation, No. 11, December 8, 1863.
39. Knote v. United States, 95 U.S. 149, 154 (1877).
40. L.C.K., *The Power of the President to Grant a General Pardon or Amnesty for Offences Against the United States* (pts. 1-2), 8 AM. L. REG. (new series) 513, 525-26 (1869).

The words, 'except in cases of impeachment,' were inserted, *nem. con.*, after 'pardons.'

Monday, August 27th

In Convention,—Article 10, Section 2, being resumed,—

Mr. L. Martin moved to insert the words, 'after conviction,' after the words, 'reprieves and pardons.'

Mr. Wilson objected, that pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen.

Mr. L. Martin withdrew his motion.

Saturday, September 15th

Article 2, Sect. 2. 'He shall have power to grant reprieves and pardons for offences against the United States,' & c.

Mr. Randolph moved to except 'cases of treason.' The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The traitors may be his own instruments.

Col. Mason supported the motion.

Mr. Gouverneur Morris had rather there should be no pardon for treason, than let the power devolve on the Legislature.

Mr. Wilson. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt, he can be impeached and prosecuted.

Mr. King thought it would be inconsistent with the constitutional separation of the Executive and Legislative powers, to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State; the next was equally disposed to pardon them all [Shays Rebellion]. He suggested the expedient of requiring the concurrence of the Senate in acts of pardon.

Mr. Madison admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President, that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He would prefer to either, an association of the Senate, as a council of advice, with the President.

Mr. Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body.

Col. Mason. The Senate has already too much power. There can be no danger of too much leinity in legislative pardons, as the Senate must concur; and the President moreover can require two-thirds of both Houses.

On the motion of Mr. Randolph,—

Virginia, Georgia, aye—2; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no—8; Connecticut, divided.[41]

Legal authorities have noted and courts have held that the power to grant a pardon both is and is not exclusively in the hands of the president. In *The Federalist, On the New Constitution,* Hamilton wrote,

41. E. Scott, Journal of the Federal Convention Kept by James Madison 612-13, 734 (1894).

> But the principal argument for reposing the power of pardoning in this case in the chief magistrate, is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed, that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the president; it may be answered in the first place, that it is questionable, whether, in a limited constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.[42]

When the legislative branch of the government attempted to frustrate an executive pardon, the court in *Ex parte Garland*[43] declared that the president, for reasons, the sufficiency of which he is the sole and exclusive judge, has the power to pardon. The effect of the pardon is to make it impossible for any legislative power to inflict, constitutionally, any punishment whatever upon the one pardoned. Mr. Justice Field added,

> The President had the right to grant an amnesty. The Constitution gives him unlimited power in respect to pardon, save only in cases of impeachment. The Constitution does not say what sort of pardon; but the term being generic necessarily includes every species of pardon, individual as well as general, conditional as well as absolute. . . . It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.[44]

A subsequent article on the power of the President to grant a general pardon or amnesty reinforced Mr. Justice Field's point-of-view:

> The power of pardon conferred by the Constitution on the President is plenary and unlimited, except in cases of impeachment. It is coextensive with the power to punish, and extends to every offence known to the law; and it may be exercised at any time after the commission of the offence, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. Its exercise, and the mode of its exercise, are placed, without condition or limitation, wholly in the discretion of the President, and it is not subject to legislative control. It includes the power to grant conditional as well as absolute pardons, and of commuting to a milder punishment that which has been adjudged against the

---

42. A. Hamilton, J. Madison, J. Jay, The Federalist, On The New Constitution, 342-43 (1842).
43. 71 U.S. (4 Wall.) 333 (1866).
44. *Id.* at 351-52.

offender.[45]

Citing the Congressional proceedings and the debates on the Constitution, the author added that if the legislature were to exercise the pardoning power, it would not be authorized by the Constitution:

> There is not only no express grant to Congress of power over the subject of a general pardon or amnesty, but no such power can rightfully be derived by implication as being necessary to carry into execution any power expressly granted by the Constitution; . . . The 'clear conclusion' would seem to be that the power to grant a general pardon or amnesty for offences against the United States is an executive and not a legislative power, and that it cannot be created, exercised, or controlled by any Act of Congress.[46]

In spite of the aforementioned historical and legal precedent to the contrary, courts have permitted the legislature to exercise what some believe to be solely an executive privilege. For example, in *United States v. Hughes*,[47] the court stated, "While pardons are usually granted by the executive, the pardoning power by no means is confined to that branch of the government."[48] Consequently, the court allowed the Pennsylvania legislature to share in the executive's pardoning powers. The court added,

> From the very nature of government, it requires no reasoning to prove the self-evident proposition that in Pennsylvania the power of pardon was vested in the legislative branch by the inherent power of the supreme lawmaking power and in the executive by constitutional provision. The grant of this power to the executive was no limitation on the right of the power granting it to exercise it also.[49]

And the Court in *Brown v. Walker*[50] allowed the Congress to pass an act of general amnesty, granting immunity to witnesses. In dissent, Mr. Justice Field maintained his position initially expressed in *Ex parte Garland*[51] and remarked,

> But there is another and conclusive reason against the statute of Congress. It undertakes, in effect, to grant a pardon in certain cases to offenders against the law, that is, on condition that they will give full answers to certain interrogatories propounded. It declares that the alleged offender shall not be punished for his offence upon his compliance with a certain condition. The legal exemption of an individual from the punishment which the law prescribes for the crime he has committed is a pardon, by whatever name the act may be termed. And a pardon is an act of grace which is, so far as relates to offenders against the United States, the sole prerogative of the President to grant. . . .

---

45. L.C.K., *The Power of the President to Grant a General Pardon or Amnesty for Offenses Against the United States*, 8 AM. L. REG. (new series) 513, 516 (1869).
46. Id. at 589.
47. 175 F. 238 (W.D. Pa. 1892).
48. *Id.* at 241-42.
49. *Id.* at 242.
50. 161 U.S. 591, 601 (1895): "Although the Constitution vests in the President 'power to grant reprieves and pardons for offences against the United States . . .' this power has never been held to take from Congress the power to pass acts of general amnesty . . . ."
51. 71 U.S. (4 Wall.) 333 (1866).

> Congress cannot grant a pardon. That is an act of grace which can only be performed by the President.[52]

Pursuing the theory that the Legislative branch has the legal authority to pardon because of its supreme lawmaking powers and that the Executive branch has the legal authority to pardon because of the constitutional provision, the authors of "The Authority of Congress to Grant Amnesty"[53] concluded,

> In sum, there is no indication, either in the language of the Constitution or in the judicial exposition of government under the Constitution, that Congress is precluded from granting amnesty. On the contrary, there is judicial recognition that an act of amnesty is legislative in character, and that Congress, by enacting types of legislation admittedly within the scope of its constitutional authority, can achieve the effects of amnesty. The Court has ruled only that Congress may not restrict or limit the operation of a presidential pardon; in supplementing a presidential amnesty, or in enacting amnesty on its own authority, Congress would not violate the separation of powers. In short, Congress has plenary power under the Constitution to grant amnesty to any class of offenders, on such terms as it considers just. Furthermore, we have seen that Congress is given the constitutional authority to act on several different groups of war resistors by the granted powers enumerated in Article I, section 8. Although the general welfare clause will probably be of little assistance, the fourth, dealing with naturalization powers, will allow Congress to touch those who have renounced their American citzienship [sic]. The clauses concerning the powers of Congress are porbably [sic] the most important in this area. They allow Congress to alleviate problems arising directly from the war; all categories of resistors can be included here. The admitted power of conscription implied by clauses twelve and thirteen, when coupled with the power to define and punish crimes in the elastic clause, gives Congress the ability to act on those who have violated the Selective Service Act directly. Military violators, as well as civilians attached to the military, fall under Congressional aegis as a result of the clause pertaining to government of the armed forces. In conclusion, once the overall power to amnesty is established, Congress will have the constitutional means to affect any and all groups it wished to.[54]

Moreover, the article noted approvingly that Mr. Justice Holmes in *Biddle v. Perovich*[55] retreated from the broad statement expressed by Mr. Chief Justice Marshall in *United States v. Wilson*[56] regarding the executives authority to grant pardons:

> A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the Constitutional scheme. When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.[57]

---

52. 161 U.S. at 638.
53. *Hearings Before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, Selective Service System Procedures and Administrative Possibilities For Amnesty*, 92d Cong., 2d Sess., at 490 (1972) [hereinafter cited as *1972 Hearings*].
54. *Id.* at 501.
55. 274 U.S. 480 (1927).
56. 32 U.S. (7 Pet.) 150 (1833).
57. Biddle v. Perovich, 274 U.S. 480, 486 (1927).

Thus, one can conclude that both the Executive and the Legislative branches have exercised the power to pardon and that "[W]hile the Constitution vests in the President authority to grant reprieves and pardons, it nowhere expressly prohibits Congress from exercising a similar power concurrently. The language of the constitutional provision dealing with pardons is not, in terms, an exclusive grant; it does not vest *the* pardoning power in the President, but only confers on him 'power to grant reprieves and pardons . . . ."[58]

B. Eligibility for Pardon

The judiciary, in addition, has been called upon to decide who is and who is not eligible for amnesty. For instance, in *Stetler's Case*,[59] a witness was presented for the prosecution. The defense objected to his testimony, calling it incompetent, but when the witness produced a pardon he was allowed to be sworn and testified to a fact material in the cause. On appeal, however, the district judge reversed the trial court's decision not because the witness was a convicted, yet pardoned, felon, but because the pardon granted by President Millard Fillmore was incomplete and incorrect and thus ineffectual. The witness' testimony was ruled incompetent. Although never challenging the president's authority to pardon, the judge suggested that there be a reasonable relationship between the pardon and the conviction:

> There is nothing of which we can take hold, to connect the pardon with the conviction, and thus to make them commensurate. We must begin by assuming that 'June term' means 'May sessions'; next, that the offence of counterfeiting includes the independent felony of uttering, and then that a sentence to fine and imprisonment is sufficiently described as a sentence of imprisonment; and, if either of these assumptions is too broad, there is nothing left for us but an interpretation of the instrument *ex visceribus suis*, without reference to anything beyond. We cannot, by judicial construction, expand the pardon of one felony into a pardon of two; and unless we do this, the pardon, though it be not void, has no application to the felony of which George was convicted under the second count of the indictment against him. I must therefore hold that the witness, notwithstanding the pardon, was incompetent, propter delictum, and that the prisoner is entitled to a new trial.[60]

Possibly the most bounteous interpretation of who was eligible for amnesty came during and following the Civil War. Stating that the intent of amnesty was to "lull strife to sleep," the court in *State v. Blalock*,[61] remarked,

> It [amnesty] embraces all who may be supposed to have committed crimes or injuries by reason of their connection with the late war, whether they were officers or privates, . . . whether they have

58. *1972 Hearings* 492.
59. 22 F. Cas. 1314 (No. 13,380) (E.D. Pa. 1852).
60. *Id.* at 1316.
61. 61 N.C. 242 (1867).

> been convicted or not. . . . Those who were engaged in the fight were neighbors, and must meet each other, and live together either in oblivion and forgiveness of the past, or in hatred and strife. And, besides, it is to be expected as it is desirable, that those of the opposing sections who are not now neighbors will, in many instances, become so by removals; and the intercourse of a common people, and the duties of a common government will often throw them together.[62]

Furthermore, the judiciary has recognized that limitations may be placed upon those eligible for amnesty. In *Haddix v. Wilson*,[63] for example, neither "guerillas" nor "unlicensed trespassers" were granted amnesty. While amnesty exonerated from legal responsibility all officers and soldiers of both the Federal and Confederate Armies, "Guerrillas, and others not acting under the color of military authority, are therefore still liable for double the value of the property unlawfully taken by them during the war. The legislature did not intend to relieve robbers without pretense of military authority."[64]

While limiting the benefit of an amnesty to those who committed crime by reason of their involvement with the Civil War, the court in *State v. Shelton*[65] offered a rather compassionate explanation on why an amnesty was extended to January 1, 1866, although hostilities officially ceased in the Spring of 1865:

> In some portions of the State, and especially in the West, where this homicide was committed, the people were divided, some fighting for the United States, and some against it, and many had to leave their homes and families. These persons had to return and meet each other, and learn of the destruction of their property and the outrages to their families and friends. And our legislators knew that, just as the ocean is angry, long after the storm has passed, so the passions of many do not become calm in a day, after a war. And the object was to show the same clemency to criminals who acted under the frenzy of vengeance after the war, and up to January, 1866, for outrages committed during the war, as to those who committed the outrages. Amnesty is an act of grace, to be construed liberally in favor of the subject; it being the highest respect to the government to suppose that its most amiable prerogative was not intended to be exercised sparingly.[66]

Furthermore, whether the eligible party accepts the pardon is irrelevant. In *Biddle v. Perovich*[67] the executive commuted Perovich's sentence from death by hanging to life in prison. Later the convicted murderer filed a Writ of Habeas Corpus, alleging that his removal from jail to a penitentiary and the order of the President were without his consent and thus without legal authority. Speaking for the Court, Mr. Justice Holmes noted, "Just as the original punishment would be imposed without regard to the prisoner's consent and in the

62. *Id.* at 247.
63. 66 Ky. (3 Bush) 523 (1868).
64. *Id.* at 526-27.
65. 65 N.C. 294 (1871).
66. *Id.* at 298.
67. 274 U.S. 480 (1927).

teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done."[68] Holmes added, "The considerations that led to the modification had nothing to do with his will."[69]

In a recent decision, *Air Trans. Ass'n. v. Professional Air Traffic Contr. Org.*,[70] where the subject of the eligibility for amnesty was suggested, the court replied,

> I think I said before, and I say now, that those who knowingly disobey a law must face the penalty for the violation. They have no right to amnesty. Nevertheless, they are entitled to fair treatment in the administration of penalties, to consideration of mitigating circumstances, and to a precedure that is such, as far as the court can assure, as to make the defendants think it is fair.[71]

No doubt the court's declaration that "They have no right to amnesty" means that the defendants cannot receive amnesty from the court. For certainly the court could recognize the "right" to amnesty coming from either the executive or legislative branch of government. While acknowledging the limits of his judicial power concerning amnesty, the judge added, "[T]he court has a duty to consider individual circumstances before determining whether to impose any penalty."[72]

Hence, in order to be eligible for amnesty and for the pardon to be recognized as valid by the court, the pardon must be complete and correct in form; it cannot be issued in error or ignorance; and it can be as restrictive or as broad as the executive or legislature intends. In addition, the pardon is not conditioned upon the eligible parties' acceptance.

The judiciary, therefore, has been instrumental in shaping the concept of amnesty. The courts have defined the words amnesty and pardon based on Anglo-American law and history; they have affirmed the constitutionality of amnesty by citing the legislative history of article II, § 2; they have refused to permit the legislature's statute to thwart the constitutional power of the executive to grant amnesty; and they have not allowed their own personal pique to jaundice their decisions:

> I reach this conclusion not without reluctance. The crime of the prisoner has been grave, for it involved not only the violation of the duty he owed as an American citizen to this country, but the breach of the allegiance he owed to this state, of which he has long been a resident and citizen, as well as an intended outrage upon his neighbors and fellow-citizens, whose property he proposed to plunder. . . . But my duty is to administer the law, and to construe this proclamation like a public statute, according to its terms and legal import. I am not at liberty to withhold its benefit from any persons embraced by its terms whether they have been so embraced by inadvertence or design.[73]

---

68. *Id.* at 486.
69. *Id.* at 487.
70. 313 F. Supp. 181 (E.D.N.Y. 1970), *cert. denied*, 402 U.S. 915 (1971).
71. Id. at 187.
72. Id.
73. *In re* Greathouse, 10 F. Cas. 1057, 1062 (No. 5,741) (N.D. Cal. 1864).

II. The Indochina War Resister

The subject of amnesty is, indeed, one which has been analyzed by the country's most brilliant jurists. What, then, do these legal and historical precedents mean to the war resister[74] who has refused to serve in the armed forces.

Both houses of the ninety-second Congress have introduced legislation supporting amnesty.[75] The essential differences in the bills

---

74. It must be noted that war resistance takes many forms. The man in the sixties who married to escape conscription, the one who sired a child, the one who maintained a student deferment, the one who sought a job which provided a deferment, the one who enlisted in the National Guard or the reserves, the one who played "gay" at his pre-induction physical, the one who drugged himself in the hope of failing the physical exam, the one who intentionally failed his mental exam, the one who sought a conscientious objector classification, the one who fled the draft or the armed forces—all in their own way are war resisters. These popular and often used methods were burlesqued by Phil Ochs in "Draft Dodger Rag":

I'm just a typical American Boy
From a typical American town,
I believe in God and Senator Dodd
And in keeping old Castro down.
And when it came my time to serve
I knew better dead than red,
But when I got to my old draft board,
Buddy, this is what I said:
Chorus: Sarge, I'm only eighteen
I got a ruptured spleen
And I always carry a purse,
I got eyes like a bat
And my feet are flat,
My asthma's getting worse.
O think of my career
My sweetheart dear,
My poor old invalid aunt,
Besides I ain't no fool
I'm a-going to school,
And I'm working in a defense plant.

75. H.R. 5690, 92d Cong., 1st Sess. (1971), introduced by Congressman Edward Koch. The purpose of this bill is to amend the Military Selective Service Act of 1957, expanding the definition of "conscientious objector" to include conscientious opposition to military service in a particular war and providing certain registrants the opportunity of claiming exemption from military service as selective conscientious objectors irrespective of their selective service status.

S. 3011, 92d Cong., 1st Sess. (1971), introduced by Senator Robert Taft. This bill proposed to offer a conditional amnesty to persons who have failed or refused to register for the draft or who have failed or refused induction into the Armed Forces of the United States. This bill requires three years of alternative service and only draft resisters are eligible.

H.R. 12417, 92d Cong., 2d Sess. (1972), introduced by Congressman Koch. This is the same as the Taft proposal (S. 3011), but it requires two years of alternative service instead of three.

H.R. 12664, 92d Cong., 2d Sess. (1972), introduced by Congressman Koch. To approve and authorize amnesty or mitigation of punishment for certain persons who have illegally manifested their disapproval of the U.S. participation in the Southeast Asia War; and to provide for restoration of civil and political rights that have been lost or impaired by reason of such illegal acts. This bill gives the President the right to make all the major decisions such as: who will be granted amnesty, what rights will be restored to these people, and under what conditions, and when amnesty will be given.

H.R. 14175, 92d Cong., 2d Sess. (1972), introduced by Congresswoman Bella Abzug. This bill provides for a universal, unconditional amnesty without alternative service requirements. This amnesty would cover draft re-

are that only one, Congresswoman Bella Abzug's, provides an amnesty for both draft resisters and deserters and requires no alternate service, whereas the others limit their effects solely to draft resisters and will require some form of alternative service. In short, Ms. Abzug supports a universal and unconditional amnesty; the others favor a conditional amnesty restricting eligibility to draft resisters.[76] The anticipated response, to an amnesty is one of equity. How does one justify offering amnesty to some while others have served, fought, and sometimes died?

A. Amnesty or No Amnesty

One of the consequences of the war in Indochina is that it produced a class of American refugees who, unwilling to serve, either submitted to prosecution and were jailed or else fled this nation's authority and emmigrated.[77] The issue of amnesty toward these men does not lend itself to a balancing of equities between those who served and those who refused. Does the grief of a family who lost a loved one in Indochina diminish if another family realizes that their loved one can never return to the United States? Is the soldier who was wounded and permanently disabled in Indochina made whole if another man is tried, convicted, and incarcerated for refusing to serve? Did it take any more courage to submit to conscription and fight in Indochina than it did to leave one's country, family, and friends with the knowledge that he might never be allowed to return? A mother whose son was killed in Vietnam testified, "However, I plead with you not to underestimate that it may have taken another kind of courage to go into exile or to jail. It is not easy to go against the tide of public opinion in support of conscience."[78] It would, in reality, be both unconscionable and immoral to attempt to placate the loss, heal the wounds, or equate the courage of the war's victims by vindictively denying amnesty to those who wish to accept it. To allow the attitude of retribution to enter into the subject of amnesty,

---

sisters, deserters, and those who have received less than honorable discharges from the service.

H.R. 12523, 92d Cong., 2d Sess. (1972), introduced by Koch. Same as H.R. 12417.

H.R. 12822, 92d Cong., 2d Sess. (1972), introduced by Koch. Same as H.R. 12664.

76. The amnesty proposed would not absolve individuals of crimes other than refusing induction or desertion. All war resisters, both draft dodgers and deserters, however, would receive amnesty for evasion and desertion.

77. St. Louis Post-Dispatch, March 18, 1973, § (pictures) at 16: Amnesty proponents, using Government and non-Government sources, say that 40,000 to 70,000 war opponents have crossed into Canada. There are still 450 exiles in Sweden, down from a high of 700. There are 5,000 men in the United States who have served jail time as Selective Service violators and 25,000 who still could be prosecuted; estimated number of exiles: TIME, Jan. 10, 1972, at 15 (70,000); NEWSWEEK, Jan. 17, 1972, at 19 (75,000).

78. *1972 Hearings, supra* note 53, at 250.

to play one person, the wounded war veteran, for example, against the war resister is to compound the problem and fail to see that such an attitude pits victim against victim: "It is the Vietnam policy that has made casualties and mercenaries and POWs and jailbirds and legal evaders and exiles of an entire generation of young Americans. They are all casualties. But now, one victim, the Vietnam dead or the Vietnam returnee, is used against another, the refugee."[79]

Instead of further fragmenting the nation over the rightness or wrongness of the undeclared war in Indochina, amnesty could include provisions which might attempt to reconcile and heal the division within the society brought about by the war. While it is conceded that no act can return a loved one, heal a war damaged body or mind, or return to the man who served that year or more of his life, an amnesty proclamation could include adequate education and employment benefits for the veteran, increased medical attention for the maimed and crippled, and cash grants to provide for the dependents of men killed in Indochina. The war has victimized an entire nation. An amnesty which seeks to assist all whose lives have been tragically affected by it, might be more readily accepted.

Furthermore, amnesty must not be limited solely to the draft dodger; the deserter, too, must be included. Both are war resisters; their actions were brought about by the same cause. Many suggest that to limit amnesty to the draft dodger creates class discrimination:

> To call for a general amnesty for draft dodgers, on the one hand, and to declare that military deserters be judged on an individual basis, on the other hand, is to confuse what is at issue—conscionable objection to the war. . . .
>
> In the main, deserters tend to be of lower class origins, poorly educated, and inarticulate about the reason for their war resistance, whereas the draft dodgers tend to be of middle class backgrounds, well educated, and articulate about their objections to the war. . . . Dodgers usually have had the luxuries of education, family connections, and sympathetic professional advice to help them formulate their thinking before they are confronted with induction. In contrast, the deserter stands quite alone in a hostile military environment, the callousness and brutality of which has made him come to terms with his personal involvement with the military and the war.[80]

A fear arises in others that the government will play one group of war resisters against another, pardoning the draft dodger and ignoring the deserter:

> If a significant number of draft resisters accept an amnesty which does not include deserters, over half the community of war resisters in Canada will never be allowed to return to the U.S. There is no hope that a second amnesty would be passed if the initial offer is acceptable to a significant number of draft dodgers. It is time for you to recognize the commitment you made when you refused

---

79. *Id.* at 654.

80. AMEX-CANADA, Jan.-Feb., 1972, at 18. AMEX-CANADA is published by Americans exiled in Canada.

> to go into the military. You must support the entire community of war resisters.[81]

As James Reston, Jr. noted, "Draft refusal or draft evasion questions have largely been an issue for the college educated. This is reflected in the exile population: the impulse to flee for the evader is abstract, political, whereas the impulse to flee for the deserter is often a gut reaction of outrage at what he sees in the military. . . . The Army must cease to be a primary escape from the Appalachias, the inner cities and the small towns of America."[82] And as Henry Scharzchild, Director of the Project on Amnesty of the American Civil Liberties Union Foundation stated,

> An amnesty that would cover only draft refusers (as some propose) would compound the inequities already visited upon the young generation by the war and the draft. By and large, the middle class, white, well educated were spared from the military service—they found shelter in the reserves, in college deferments, and in conscientious objection. The disporportionate burdens of fighting this war have fallen upon the poor, the less well educated, the black and other minority groups. But the same qualities of good education, middle class and white race in a general way also characterize those who refused to submit to compulsory military service and went to prison or into exile or underground. It is again the poor, the less educated, and the members of minority groups who contribute a much larger proportion of the deserters, of those who submitted to induction and became aware only *in* the military of the cruelties and irrationalities of the war. It is these men, too, who in glaringly disproportionate numbers have been tried by military courts for various offenses and who have been given less than honorable discharges—impediments of the most serious nature for their future lives and careers. It would be outrageous if amnesty, too, were to become an instrument of class and race discrimination, we are in effect so many other institutions and actions of our society. The circumstances which impelled these as well as those to draft refusal or desertion are the same: the war and the draft. And the motives were usually the same: a refusal to submit to the machinery of the war, whether for religious, moral, ideological or personal reasons. All acts and failures to act, we urge, that arose out of the war, that would not have occurred but for the war, and that might be subject to criminal penalties, should be included in amnesty.[83]

Conditional amnesty requiring alternate service, which is essentially punitive in nature, seems hypocritical and contradictory. Innumerable men fled the country because they could not serve in the national interest in Vista or the Peace Corp; it was the Army or prison or exile.[84] And it is contradictory to suggest that there are

---

81. AMEX-CANADA, March-April, 1972, at 29.
82. THE NEW REPUBLIC, Oct. 9, 1971, at 22.
83. *1972 Hearings* 303; *see 1972 Hearings* 194: "[I] think it would be very easy for the U.S. Senate to find amnesty for [sic] an acceptable solution for people such as myself that have clear explanations for their actions and a constituency that you want to appease. But that you aren't nearly as inclined to give amnesty to the 19-year-olds who went AWOL because they were in love with the Chevrolet they left behind in Detroit. I think amnesty should be given to all people."
84. *See* AMEX-CANADA, Jan.-Feb., 1972, at 17; St. Louis Post-Dispatch, April 20, 1973, § A, at 1 and 13:

jobs in the national interest for war resisters when a sizable percentage of the nation's work force is unemployed.[85] A conditional amnesty, moreover, suggests that the nation establish a Trumanesque amnesty review board which would decide if the war resister is eligible for amnesty and if he is fulfilling or has fulfilled the condition precedent for amnesty. Such an amnesty review board would merely be an extension of the Selective Service System and the military, mirroring those very institutions which forced the war resister into prison or exile and from which the war resister fled.[86]

C. Unconditional Amnesty

An unconditional amnesty, however, for all war resisters would have innumerable benefits. First, as Ms. Abzug note,

> It would release those imprisoned. It would immunize from criminal prosecution. It would expunge all criminal records. And it would require an honorable discharge to anyone who received other than an honorable discharge because of the violations I have mentioned [anyone who, in opposition to the war, absented himself from the Armed Forces]. . . . A further provision would require restoration of citisenship upon simply [sic] request to anyone who renounced his citizenship because of his opposition to the war.[87]

Secondly, an unconditional amnesty would restore a trust in the government. A writer in Canada suggested, "An act of amnesty would go a long way toward restoration of faith of young Americans in their government."[88] Thirdly, an unconditional amnesty would affirm the notion that the nation is secure and is able to reconcile and pardon those who questioned its authority. At the conclusion of the Civil War, the government imposed no penalties on the vanquished, tried and executed no Confederate soldiers for treason, and forced no one into exile. Hopefully the compassion and foresight which dic-

---

> When asked whether her son was interested in returning to this country, Mrs. Fred H. Wuest, Jr., . . . whose son Lawrence is teaching in New Guinea, said, 'He never talks about it I guess he'd like to come back and visit."
>
> Mrs. Wuest, whose husband died two months after the couple visited their son in Toronto last December, said that she would 'like to see him come back, but I don't know if he would. He was pretty bitter.'
>
> Young Wuest's application to be declared a conscientious objector was rejected, and he was required to resign from the Peace Corps when he received his induction notice in 1970."

85. *See* N.Y. Times, Jan. 6, 1973, at 1, col. 4.

86. 13 HARV. INT'L L.J. 124 n.268 (1972): "It is interesting to note that, with respect to the amount of time which must have been spent on each case, the members of the President's Amnesty Board met only on weekends and holidays and provided their services on a voluntary basis." "Given that the Board met only on weekends and holidays . . . and that 15,805 cases were considered over the course of about one year, the Board must have devoted to each individual case an average of less than five minutes." *Id.* at 126 n.275.

87. 118 CONG. REC. 62 (daily ed. April 20, 1972) (remarks by Rep. Abzug on H.R. 14175).

88. AMEX-CANADA, Jan.-Feb., 1972, at 33.

tated those actions are still in existence.[89]

Lastly, an unconditional amnesty would recognize what the Supreme Court acknowledged in both *Seeger v. United States*[90] and *Welsh v. United States*:[91] men who have conscientious beliefs against war and unquestioned sincerity are exempt from military service. Specifically, the Court in *Seeger* noted that in resolving the problem of which Selective Service registrant is eligible for a conscientious objector exemption, "[O]ne deals with the beliefs of different individuals who will articulate them in a multitude of ways. . . . Local boards and courts . . . are not free to reject beliefs because they consider them 'incomprehensible.' "[92] Certainly one could "articulate" sincerely held beliefs through the "incomprehensible" act of self-imposed exile. In *Welsh*, Mr. Justice Black observed that one is exempted from military service whose conscience is spurred by deeply held moral, ethical, or religious beliefs.[93] Assuredly these moral, ethical, or religious beliefs could manifest themselves at different times in different men.

An argument against granting amnesty to the war resister is that both the Selective Service System and the military provide administrative redress for the person and that the war resister failed to exhaust these civilian and military remedies. Certainly Welsh and Seeger benefitted from following codified administrative procedures which eventually led to judicial review. Many other war resisters, however, did not possess the legal and administrative expertise demonstrated by either Welsh or Seeger. Military and Selective Service Counselors at the University of Wisconsin declared, "Experience leads us to the conclusion that upwards of 90% of all of the men who are in Canada as the result of an effort to avoid the draft are there because they were unable to obtain accurate information and competent and responsible counseling. Many, if not most, are there because they misunderstood the alternatives which were open to them under the law."[94]

Mr. Robert Ransom, whose eldest son was killed in Vietnam, testified that when his son died and with two sons subject to the Selective Service System and three others following, he was determined to become as expert as possible in the intricacies of Selective Service law:

> In my efforts to educate myself, I became appalled at how little sound, legal advice there actually was available to our young men, in spite of the fact that the Selective Service statutes and regulations have always constituted a clearly defined body of

89. *1972 Hearings* 185.
90. 380 U.S. 163 (1965).
91. 398 U.S. 333 (1970).
92. 380 U.S. at 184-85.
93. 398 U.S. at 344.
94. *1972 Hearings* 319.

> law, readily available to the legal profession as a source of additional practice. I find it significant that in the past 3 years I have counseled the sons of partners in several of New York's largest law firms, and for no better reason than that their fathers could not find among their 100 to 200 partners and associates any lawyers who was [sic] competent to even discuss draft matters intelligently.
>
> The foregoing is significant only in that it indicates the vacuum into which we let our sons fall. They saw the inequities that abounded in the system, particularly in the era from 1967 to 1969. Not only did the law itself have built-in injustices, but it was even more shocking to see the differences in the way the law was applied from one local board to another, often in neighboring towns.[95]

One should add that even if the administrative and judicial processes are successful, the legal fees are beyond the means of most men. For example, one notable war resister, Muhammad Ali, expended approximately 150,000.00 dollars to prove his conscientious objector claim.

The benefits of an unconditional amnesty would neither destroy military morale nor make the nation less secure. It is acknowledged that the morale of the armed forces is low. Writing in the *Armed Forces Journal*,[96] Col. Robert D. Heinl, Jr. warned that,

> The morale, discipline and battleworthiness of the U.S. Armed Forces are, with few salient exceptions, lower and worse than at any time in this century and possibly in the history of the United States.
>
> By every conceivable indicator, our army that now remains in Vietnam is in a state approaching collapse, with individual units avoiding or having refused combat, murdering their officers and non-commissioned officers, drug-ridden, and dispirited where not near-mutinous.[97]

He sees countless anti-military pressures being brought against the armed forces from divergent sources. Underground newspapers, anti-military lawyers, off-base coffee houses, the Order of Maximilian ("a community of turbulent priests and clergymen"), the "antiwar show-biz front," weak courts, all are contributing to low morale, according to the author. Would an unconditional amnesty lower morale even further? As Professor Commager suggested,

> Quite aside from the observation that it is difficult to see how that morale could be any lower than it now appears to be—it is proper to say that there seems to be no objective evidence whatever to support this argument. It does not appear that amnesty worked this way in the past, in the relatively few instances where it was applied while the war was still going on. Nor is it irrelevant to note, for what it is worth, that there is strong support for amnesty from a number of veterans' organizations today.[98]

And as Ms. Abzug added,

> [T]his country never has experienced significant difficulty in raising armies for its military endeavors. I have faith in the patriotism

---

95. *Id.* at 247-48; *see* F. Stevens, If This Be Treason (1970).
96. Armed Forces Journal, June 7, 1971, at 1.
97. Id.
98. *1972 Hearings* 188; *see* 13 Harv. Int'l L. J. 127 n. 281, 128 n. 285 (1972).

> of young Americans. I have faith that they would rise to defend this country if a national emergency really required it. But I also have faith in their ability to think for themselves, to distinguish right from wrong where their Government's policies are concerned, and to have the courage to resist official policies where they are manifestly immoral.[99]

Granted, the Director of Selective Service, Curtis W. Tarr, stated that a general amnesty would seriously disrupt inductions:

> If the amnesty affected only those 300 or so men presently serving prison sentences, then inductions probably could continue but with some hard feelings among those ordered to report. If on the other hand, the amnesty made it possible for approximately 10,000 men who have been convicted since 1947, and 6,000 registrants who face possible prosecution, to return to the full rights of citizenship without any penalty, then it would be difficult to justify the continuation of inductions. Our youth could not understand such opposing policies. I am certain that it would be nearly impossible to maintain membership on local boards as well . . . .
>
> In short, I believe that any widespread program of amnesty would be incompatible with the continuation of inductions.[100]

Doubtless Mr. Tarr's reservations, whether justified or not, are moot when one considers former Secretary of Defense Laird's news release dated January 27, 1973:

> With the signing of the peace agreement in Paris today, and after receiving a report from the Secretary of the Army that he foresees no need for further inductions, I wish to inform you that the Armed Forces henceforth will depend exclusively on volunteer soldiers, sailors, airmen and Marines. Use of the draft has ended.[101]

And perhaps most importantly, "Is there not something to be said for putting Government on notice, as it were, that if it plunges the nation into another war like Vietnam—it will once again be in for trouble"?[102] In his article, "Making a Rational Foreign Policy Now,"[103] Mr. Robert L. Heilbroner projected,

> I would think that by the year 2000 and possibly much sooner, we would find revolutionary governments installed, or formidable revolutionary armies fighting, in most of Asia, in at least a half-dozen Latin-American countries, and probably in a fair number of nations in West and Central Africa, and the Near East.[104]

He argued, furthermore, that a policy of neutrality toward such wars of national liberation is imperative because "The great lesson of the Vietnam war is now clear. It is that the mightiest nation in the world has not been able to defeat the forces of revolutionary nationalism in one of the smallest nations in the world."[105] An unconditional am-

---

99. 118 CONG. REC. 62 (daily ed. April 20, 1972) (Remarks of Rep. Abzug on H.R. 14175).
100. *1972 Hearings* 46-7.
101. News Release from Assistant Secretary of Defense (Public Affairs), Washington, D.C., January 27, 1973.
102. *1972 Hearings* 188.
103. Heilbroner, *Making a Rational Foreign Policy Now*, HARPER'S MAGAZINE 64 (Sept. 1968).
104. *Id.*
105. *Id.*

nesty would indirectly embrace a foreign policy of neutrality. It would illustrate that no longer would this country's military be capable of marshalling tens of thousands of its young men to be used as anti-revolutionary forces without serious national repercussions.[106]

III. Conclusion

Both legal and histrical precedent indicates that either the legislative or the executive branch of government can grant an amnesty to America's war resister. If exercised, the pardoning power can reaffirm the nation's belief in itself and its institutions ,and it can indicate that the government can be both gracious and compassionate. The question of amnesty, therefore, can be answered in such a way as to help heal the divisions brought about by the war in Indochina. A government with the foresight and understanding to exercise this consitutional power will exhibit courageous statesmanship if the amnesty has malice towards none and charity for all.

Julian C. Carey

106. *See* St. Louis Post-Dispatch, February 13, 1973, § C (editorials) at 2: "Indeed, had the draft not been so readily available to President Johnson this country's deep military involvement in Vietnam might never have taken place. . . ." *See also* Buffalo L. Rev. 319 n. 43 (1972).

Comment

American Deserters and Draft Evaders: Exile, Punishment or Amnesty?

BY

DOUGLAS W. JONES

DAVID L. RAISH

Reprinted from

THE HARVARD INTERNATIONAL LAW REVIEW

VOLUME 13, NUMBER 1

WINTER 1970

Comment

American Deserters and Draft Evaders: Exile, Punishment or Amnesty?

DOUGLAS W. JONES
DAVID L. RAISH

INTRODUCTION

At his news conference of November 12, 1971, President Nixon was asked the following:[1]

> Mr. President, do you foresee granting amnesty to any of the young men who have fled the United States to avoid fighting in a war that they consider to be immoral?

The President's answer was, "No." Whatever the implications of this brief response, and whatever the motivations of these "young men," the phenomenon of large numbers of draft-age Americans, including American servicemen, fleeing to foreign countries has emerged as an issue of national concern.[2] This concern has been evidenced in public forums,[3] in numerous articles in newspapers and periodicals,[4] and in

1. N. Y. Times, Nov. 12, 1971, at 10, col. 4.

2. It is not known precisely how many American deserters and draft evaders are presently living abroad. Estimates vary widely, *e.g.*, N. Y. Times, Feb. 5, 1970, at 8, col. 4 (6,000–60,000); Newsweek, Feb. 15, 1971, at 28 (50,000–70,000). A number of unofficial sources cite a total of 50,000 in Canada alone. Canadian government figures have shown over 60,000 draft-age American males living in the country. S. F. Chronicle, Mar. 27, 1970, at 7, col. 5. The World Council of Churches estimates 50,000 deserters and draft evaders in Canada. N. Y. Times, Dec. 8, 1970, at 13, col. 4. Canadian aid groups give estimates between 20,000 and 50,000. Letter from Bob Seeley, Central Comm. for Conscientious Objectors, Philadelphia, Pa., to the Harvard International Law Journal, May 11, 1971. *See also* Comment, *Draft Resisters in Exile: Prospects and Risks of Return*, 7 Colum. J. Law and Soc. Prob. 1, n. 1 (1971), which estimated the number of exiles in Canada at 8,000–10,000.

3. *See* notes 159, 160, 161 & 286 *infra* and accompanying text.

4. *See, e.g.*, Fleming, *America's Sad Young Exiles*, Newsweek, Feb. 15, 1971, at 28;

activities at various levels of government.[5] As the American combat presence in Indochina decreases, public concern about the phenomenon may be expected to provoke a more elaborate official response. It is the purpose of this Comment, therefore, to examine *first*, the methods by which deserters and draft evaders have gained entry into Canada (which harbors the largest number of fugitives), and Sweden (whose government has taken special steps to accommodate deserters); *second*, the means by which the United States might gain jurisdiction over deserters and evaders who have fled to these two countries; and *third*, the punishment which these fugitives face upon return, and the legal and policy considerations underlying an executive or congressional decision on amnesty.

The term "deserter" as used here applies to all American servicemen who have made unauthorized departures from their posts of duty and who have remained absent for over thirty days.[6] The term "draft evader" as used here includes Americans who evade or refuse registration with the Selective Service System[7] or service in the armed forces of the United States.

Richard, *American Deserters in Stockholm*, Interplay, Sept., 1970, at 28; Lang, *A Reporter at Large*, New Yorker, May 23, 1970, at 42; Bess, *What Draft Resisters Face*, S.F. Chronicle, Mar. 27, 1970, at 7, col. 5; N. Y. Times, Feb. 5, 1970, at 8, col. 4; May 11, 1970, at 13, col. 1; Nov. 5, 1970, at 5, col. 3.

5. *See* notes 162–65 & 167 *infra* and accompanying text.

6. After 30 days of unauthorized absence, an absentee is "dropped from the unit rolls" and administratively classified as a deserter. *Hearings Before the Subcomm. on the Treatment of Deserters from the Military of the Sen. Comm. on the Armed Services*, 90th Cong., 2nd Sess. 4 (1968). *Compare* this classification *with* the statutory definition, p. 107 *infra*. The Department of Defense maintains systematic records of the total number of deserters. As early as 1968, the Department reported that over 53,000 servicemen were classified as deserters over a twelve month period. S. Rep. No. 93, 91st Cong., 1st Sess. 24 (1969). This figure prompted a subcommittee of the Senate Armed Services Committee to conclude that "the total number of deserters and those who are unauthorized absentees is of such magnitude as to provide reason for serious and special concern by civilian and military officials of the Department of Defense." *Id.* at 32. The desertion problem has since intensified; during the first ten months of fiscal year 1971 the army alone reported 68,449 desertions, nearly double the army's 1968 figure. N. Y. Times, Aug. 15, 1971, § 4, at 4, col. 7. If the total number is indicative of the number of deserters abroad, there is reason to believe that the number abroad has been increasing in recent years. In the two countries most populated with deserters, Canada and Sweden, it is thought that there are about 1100 deserters. N. Y. Times, Feb. 5, 1970, at 8, col. 4 The Swedish government has stated that 500–525 deserters are residing in Sweden. *See* note 33 *infra* and accompanying text.

7. To evade or refuse registration with the Selective Service System would include making or causing to be made false, improper or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment or muster, or false statements under any provision of the act. This definition accords with the punishment provision of the act, 50 U.S.C. App. § 462(a) (1970). No official figures are publicly available on the number of draft evaders abroad. *But see* note 2 *supra*. The number is necessarily uncertain since most evaders have, for obvious reasons, been out of touch with official sources. Any estimate is, of course, complicated by the fact that many evaders have presumably left the country without registering for the draft.

STATUS OF AMERICAN DRAFT EVADERS AND DESERTERS IN CANADA AND SWEDEN

American military deserters and draft evaders seeking refuge abroad have had to consider how their status affects (1) their ability to enter a foreign country and (2) their legal status vis-à-vis the United States while abroad. This second consideration breaks down into (a) whether the evader or deserter can be reached by formal extradition and (b) whether he is subject to deportation or other forms of removal to an area over which the United States exercises jurisdiction. These considerations will be discussed here as they apply to the recent experience of deserters and evaders attempting to settle in Canada and Sweden.

A. Immigration into Canada

Geographic proximity and cultural similarities have undoubtedly been as instrumental as any complex legal considerations in the movement of American draft deserters and evaders to Canada.[8] There are no official Canadian or American estimates as to the number of evaders and deserters who have emigrated to Canada,[9] but the Canadian government does estimate that emigration from the United States to Canada has doubled in the last ten years to approximately 25,000 annually, with most of the emigrants falling in the 20–29 year-old age bracket.[10] Nor is it known how many evaders or deserters (1) currently enjoy visitor status;[11] (2) reside in Canada illegally; or (3) have returned to the United States.

It is the announced policy of Canada not to discriminate against

---

8. Canada, whose foreign policy long mirrored that of the United States, has in recent years developed a distinct approach to foreign relations in some areas. This was the goal of a major reevaluation of foreign policy undertaken in 1967. *See* Secretary of State for External Affairs, Foreign Policy for Canadians 38 (1970); Department of External Affairs, *Perspectives in Foreign Policy*, Statements and Speeches 70/1 (1970). Canada has publicly condemned various aspects of the United States involvement in Indochina. *See* Department of External Affairs, *Some Elements of Canadian Foreign Policy*, Statements and Speeches 70/9 (1970).

9. Letter of Consul Allen Bryce, of the Canadian Consulate-General in New York, to Harvard International Law Journal, Oct. 20, 1971; *but see* notes 2 and 6 *supra*.

10. Canadian Press and Information Service, Statement of Mar. 25, 1971, New York, New York.

11. The Canadian Immigration Act, Can. Rev. Stat. c. I-2 (1970), does not specifically limit the time an alien may stay in Canada as a visitor. Section 7(3) requires the alien to report to immigration officials any change in status which would cause him to cease being a tourist or visitor, and section 7(4) allows the Immigration Minister to declare on his own initiative that the alien is no longer a tourist or visitor. Section 6 establishes a presumption that the alien is an applicant for immigrant status and not a tourist or visitor. Presumably, taking a job in Canada, coupled with extended residence there, would establish the deserter or evader as no longer being either a tourist or visitor.

deserters or evaders seeking refuge in Canada.[12] But neither does the draft evader or deserter benefit from any special provisions to ease the legal requirements for residency in Canada. To remain permanently in Canada, aliens must obtain "landed immigrant" status under the Immigration Act.[13] This status is currently available with certain qualifications to those who achieve a minimum of fifty "points" on a purportedly objective rating system. Major point categories are as follows:

(a) 1 point for each year of formal education, vocational training or apprenticeship (maximum 20);
(b) up to 15 points for skills or professions in high demand;
(c) up to 10 points for any *other* useful skill;
(d) 10 points if applicant is 18–35 years old;
(e) 10 points if applicant is applying from without Canada and has a firm job offer within Canada;
(f) 5 points each for fluency in English or French;
(g) 5 points if applicant has relatives in Canada at the place he wishes to live willing to assist him, 3 points if he has relatives anywhere in Canada willing to assist him; and
(h) up to 15 points on the basis of an interviewing officer's personal evaluation of the applicant.[14]

Additionally, there are provisions, rarely invoked, whereby the fifty point minimum can be waived or a person scoring more than fifty points can be denied entry, at the discretion of the interviewing officer.[15]

Under the above schedule an eighteen year-old American applying either at the border or at a Canadian consulate, who speaks only English and has no special skills, but has arranged for unskilled employment in Canada, begins with a maximum of 37 points.[16] Thus, the personal assessment of the interviewing Immigration Officer can be crucial. The interviewing officer has considerable latitude, since there are no standards in either the Immigration Act or the applicable Statutory Orders and Regulations[17] as to what questions the Immigration Officer may ask the applicant. However, the Canadian policy not to discriminate against evaders and deserters presumably bars direct questions as to an applicant's military status. A Canadian attorney active in immigration

12. Statement of Canadian Minister of Manpower and Immigration MacEachen, *quoted in* N. Y. Times, May 23, 1969, at 5, col. 1.

13. Can. Rev. Stat. c. I-2 (1970).

14. Immigration Regulations, Part I, *as amended*, Can. Stat. Orders and Regs. No. 67-434 (1967).

15. Can. Rev. Stat. c. I-2 § 32(4) (1970).

16. Education, 12; 18–35 years old, 10; knowledge of English, 5; job offer, 10: total of 37 points maximum.

17. Immigration Inquiries Regulations, Can. Stat. Orders and Regs. No. 67-621 (1967); Immigration Regulations, Part I, Can. Stat. Orders and Regs. Nos. 62-36 (1967), 64-327 (1964), 66-147 (1966), 67-434 (1967).

31-658 O - 74 - 7

law confirms that deserters and evaders are currently not discriminated against as such, but applicants of their age group sometimes suffer in isolated cases where an immigration official might tend to discriminate in his personal assessments of young people evidencing "counter-culture" life styles, or, more importantly, where young applicants are unable to accumulate enough points under the education and skill categories.[18]

On some occasions, border authorities have reportedly refused entry to visitors and landed immigrant applicants and have sent them back to the United States, while simultaneously notifying the American Federal Bureau of Investigation that the applicant was returning.[19] Such activity is not now officially sanctioned respecting draft evaders and deserters,[20] though informal cooperation might be less accountable to official policy. A Canadian official has acknowledged that such cooperation is sometimes given regarding other fugitives from American laws.[21] By contrast, the applicant who enters Canada as a visitor and while there applies for landed immigrant status has a right to appeal a denial of his application to the Immigration Appeals Board before he can be returned to the United States.[22] (The Board has broad powers in reviewing the acts of lower officials, as discussed *infra* at p. 105).

There are several further obstacles to obtaining landed immigrant status which could affect the American draft evader or deserter. Section 5(l) of the Immigration Act[23] bars absolutely the entry of persons who have previously associated with any group which is reasonably believed to advocate or promote subversion of democratic government, unless the Immigration Minister is convinced that entry would not be detrimental to Canadian security. Further, section 5(m)[24] provides a similar bar to anyone who has himself advocated subversion, and section 5(n)[25] bars those who might engage in espionage or other subversive activities. On occasion these provisions have reportedly been used to exclude American student radicals from Canada,[26] but there are no reported cases in Canadian courts involving this section of the Act.

Canada also bars persons convicted of, or who have admitted committing, "crimes of moral turpitude."[27] This bar has been held to extend even to cases where the person is convicted after entry on an indictment

18. Letter from Canadian Attorney Clayton C. Ruby to the Harvard International Law Journal, Feb. 23, 1971, at 5.

19. *Id.*

20. Telephone interview with Consul-General Bruce Rankin, Canadian Consulate-General, New York, N.Y., Oct. 18, 1971.

21. *Id.*

22. Immigration Appeals Board Act, Can. Rev. Stat. c. I-3, § 11 (1970).

23. Immigration Act, Can. Rev. Stat. c I-2, § 5(l) (1970).

24. *Id.* § 5(m).

25. *Id.* § 5(n).

26. Clayton Ruby letter, *supra* note 18, at 4.

27. Immigration Act, Can. Rev. Stat. c I-2, § 5(d) (1970).

returned before entry.[28] No case to date has sought to apply the bar to those who have only been *accused* of a crime. The Immigration Appeals Board in *Turpin v. Minister of Manpower and Immigration*[29] adopted the language of the Canadian court in *King v. Brooks*[30] in defining "moral turpitude" as follows:

> It appears clear that the crime must necessarily involve some element of depravity, baseness, dishonesty or immorality. This would probably include most offenses classed as felonies in the United States of America.

It is arguable that confessed draft evasion or desertion would fall within this interpretation of moral turpitude were it not for the official government policy not to discriminate against evaders and deserters for entry and immigration purposes. There is nothing in that policy, however, to warrant the implication that evaders or deserters who have committed other felonies (such as narcotics violations) would not be barred, although no cases dealing with this question have arisen in the Canadian courts.

Finally, the Immigration Act bars those aliens who might become public charges.[31] Such a provision works a special hardship on the young deserter or evader without income, a job offer, or relatives in Canada.

In summary, the evader or deserter who desires the benefits of Canadian landed immigrant status faces an apparently objective scoring system tempered by a subjective evaluation of his character. In practice, although he faces no formidable entry barrier, the greatest obstacles to legally remaining in Canada indefinitely result from his youth and lack of education and financial resources. The only alternative to obtaining landed immigrant status is illegally overstaying after entering Canada as a visitor. Those found to have overstayed are subject to criminal penalties and deportation,[32] though there is no evidence of any concerted effort by the Canadian government to identify and return overstaying deserters or evaders.

B. Immigration into Sweden

Far fewer Americans have found their way to Sweden. Since Ray Jones III, the first American deserter from the Vietnam war to go to

28. Hecht v. McFaul and Attorney General of Province of Quebec, 1961 Que. Sup. Ct. 392 (1961).

29. 1 Immigration Appeals Cases 1, 15 (1961).

30. 31 W.W.R. 673, 683 (1960).

31. Immigration Act, Can. Rev. Stat. c. I-2, § 5(h) (1970).

32. *Id.* § 46 provides maximum penalties of 6 months imprisonment and/or $500 fine for a first offense; 12 months imprisonment and/or $1000 fine for a second offense; and 18 months imprisonment for a third or subsequent offense.

Sweden, entered that country in January, 1967, only 500–525 deserters have followed, mostly from bases in nearby Germany.[33] There is no government estimate of the number of draft evaders in Sweden, but distance from the United States has apparently kept the number small. Swedish Prime Minister Olaf Palme stated in a June, 1970, interview[34] that the total number of American refugees in Sweden is quite small compared with that of other refugee groups such as French Algerians and Czechs. Palme stressed that "the Swedish government does not encourage anyone to desert. Small groups in Sweden have been active in these affairs, but that has nothing to do with the government."[34a] Even if not elevated to the status of national policy, however, Swedish sympathy for American deserters has evidenced itself in the application of immigration laws to assist their immigration into Sweden.[34b]

Immigration into Sweden is regulated by the Aliens Act of 1954[35] as implemented by the Aliens Decree of May 23, 1969.[36] As in Canada, entry itself does not pose special problems for the deserter or evader. However, an evader or deserter wishing to reside and work in Sweden for more than three months must obtain both a residence permit[37] and a labor permit.[38]

There is nothing in the procedure established for obtaining a residence permit which works any special hardship on the deserter or evader. Application can be made before or after entry as a visitor.[39] Permits are issued by the local police in the area in which the alien wishes to reside. The rules of the National Immigration Board[40] require a check to determine if the alien has a criminal record.[41] It is not clear whether a criminal conviction necessarily bars issuance of a permit to an alien, though it is undoubtedly taken into consideration. A residence

33. Telephone interview with Mr. M. Backman, Royal Swedish Embassy, Washington, D.C., Oct. 12, 1971 [hereinafter Backman Interview].

34. U.S. News and World Report, June 22, 1970, at 48.

34a. *Id.*

34b. Unofficial Swedish and American groups in Sweden state that the deserter and evader are also entitled to a living allowance, free language school and job training from the Swedish government. Svenska Kommitten for Vietnam, Stockholm, *Information to Guide an American Deserter in Sweden;* American Deserters Committee, Stockholm, "A Fact Sheet for Deserters and Draft Resisters in Sweden." The latter documents are on file at the Harvard International Law Journal.

35. Aliens Act of April 30, 1954 (No. 193). All provisions of the Act here cited were kindly translated by Mr. Jon Thormodsson, Harvard Law School, from Forfattningssamling for Beskickningar och Konsulat (FSBK) at 461 *et seq.* (1955).

36. Aliens Decree of May 23, 1969 (No. 136). All provisions of the Decree here cited are as translated in the unofficial translation of Aug. 24, 1970, provided to the Harvard International Law Journal by the Royal Swedish Embassy, Washington, D.C.

37. *Id.* § 32.

38. *Id.* § 42.

39. *Id.* § 33.

40. *Id.* § 36.

41. Backman interview, *supra* note 33.

permit, once issued, is valid for three years and is renewable.[42] Apparently, most American deserters and evaders would have little difficulty obtaining a residency permit.

The difficulty for the deserter or evader arises in connection with the issuance of a labor permit. The Alien Decree stipulates that:

> An alien is not entitled, without possessing a labor permit (*arbetstillstand*) to hold employment in Sweden.[43]

Further:

> An alien who has entered Sweden without being in possession of a labor permit must not be granted such permit as long as he is staying in Sweden.[44]

The delay and advanced planning required by the above sections of the Decree, coupled with the possibility that the alien may lack any employable skills, could impose a severe hardship for the deserter or evader seeking sanctuary. In response to this problem the Swedish government, through the National Immigration Board, has taken action under Section 52 of the Aliens Decree[45] which allows the Board to grant a permit, notwithstanding other sections of the Aliens Act, to an alien already in Sweden

> [i]f there are particularly strong reasons in view of the length of time the alien has been staying in Sweden, his personal circumstances and other facts of the case.

It is the apparent policy of the Swedish government to exercise this discretion to allow issuance of labor permits within Sweden to American deserters and evaders who can prove they were in danger of being sent to a war zone.[46] Those who can sustain this vague burden of proof are granted what the Swedish government terms "humanitarian asylum,"

42. Aliens Decree of May 23, 1969 (No. 136) § 36. The American Deserters Committee in Stockholm asserts, however, that initially the labor and residence permits must be renewed "anywhere from every three to every twelve months," while after two years the deserter or evader can be granted resident alien status (*Bosättiningstillstand*). American Deserters Committee, *supra* note 34b.

43. *Id.* § 42.

44. *Id.* § 46.

45. *Id.* § 52.

46. Backman interview, *supra* note 33. According to Swedish government officials, only American deserters can benefit from application of this discretion, but unofficial groups working within Sweden state that evaders also sometimes benefit. These unofficial sources cite a Swedish government communique of February, 1969. Letter of Robert Argento, office of Advokat Hans Göran Franck, Stockholm, to the Harvard International Law Journal, Nov. 9, 1971; American Deserters Committee, Stockholm, "A Fact Sheet for Deserters and Resisters in Sweden" and "The Swedish Government and Political Asylum", on file at the Harvard International Law Journal. The standard of being sent to a war zone would seem to be susceptible to varying degrees of proof. In any case, the danger of being sent to a war zone would be more remote for the evader than the deserter.

the sole legal consequence of which is to exempt the fugitive from the requirement of obtaining a labor permit prior to entry. The term humanitarian asylum has no significance under Swedish law and is simply descriptive of the situation in which discretion under the Decree will be exercised.[47] The grant of humanitarian asylum is not to be construed as a grant of political asylum, which is authorized by a separate section of the Aliens Act.[48]

C. Return By Extradition

The United States has established a comprehensive series of bilateral and multilateral treaties to effectuate the return of fugitives from its laws.[49] Treaties are in effect with both Canada[50] and Sweden:[51] the former is one of the oldest, amended seven times to broaden its scope over the years, while the latter, concluded in 1963, is one of the most recent.

The United States is not necessarily limited to extradition by treaty, though that is usually the method employed. While federal extradition law[52] prohibits the United States government from extraditing a fugitive from this country to a foreign country except for a crime enumerated

---

47. Telephone interview with Mr. Bu Hineback of the Royal Swedish Embassy, Washington, D.C., Nov. 10, 1971 [hereinafter Hineback interview].

48. Political asylum is provided for in § 2(2) of the Alien Act:

> A political refugee is taken in this Act to be an alien who in his native country runs the risk of being subjected to political persecution. Political persecution means that, a person, on account of his origin, his membership of a particular social group [sic], his religious or political opinion or otherwise on account of political conditions, is subjected to persecution that is directed against his life or freedom or is otherwise of a serious nature. . . .

For a suggestion that the standard is a strict one, *see* S. Sinha, Asylum and International Law 98 (1971); and that it might be meant to apply to refugees from totalitarian states, *see* Royal Ministry of Foreign Affairs, Documents on Swedish Foreign Policy 148–150 (1962).

49. The United States is at present party to one multi-national extradition treaty and has bilateral extradition treaties with 81 countries. A complete list is contained in 18 U.S.C. § 3181 (1969). *See generally* I. Shearer, Extradition in International Law (1971).

50. Extradition Convention Between the United States of America and Her Britannic Majesty supplementary to the treaty of August 1842 between the same High Contracting Parties, July 12, 1889, 26 Stat. 1508, T.S. No. 139 [hereinafter U.S.-U.K. Extradition Treaty]. The definitive 1889 treaty is actually a supplement to a one-paragraph agreement to extradite included in a general boundary settlement between the United States and the United Kingdom for Canada, A Treaty to Settle and Define the Boundaries between the Territories of the United States and the Possessions of Her Britannic Majesty in North America, Aug. 22, 1842, art. X, 8 Stat. 572, T. S. No. 119.

51. Convention on Extradition Between the United States of America and Sweden, Dec. 3, 1963, [1963] 2 U.S.T. 1845, T.I.A.S. No. 5496 [hereinafter U.S.-Sweden Extradition Treaty].

52. 18 U.S.C. § 3184 (1968).

in an extradition treaty,[53] it does not prohibit the United States from recovering a fugitive from a foreign state without benefit of treaty. The foreign state has full discretion whether to return the fugitive.[54] While the absence of recent American cases on the subject suggests that the practice is rare, United States courts have on occasion gained jurisdiction over a fugitive without recourse to an extradition treaty. In such cases a fugitive returned to the United States will not be granted habeus corpus and the courts will not deny jurisdiction to try him.[55] It is thus necessary to examine Canadian and Swedish extradition practice both under the specific treaties and municipal laws and in situations where the treaty does not cover the crime for which extradition is requested.

1. Extradition from Canada

Extradition from Canada is regulated by the Canadian Extradition Act,[56] which consists of two parts. Part One concerns extradition under an applicable treaty, while Part Two deals with extradition absent an applicable treaty.

Part One specifies that extradition by treaty is limited to the precise terms of the treaty.[57] Canadian courts have held that the Part serves neither to increase[58] nor decrease[59] the types of crimes for which a treaty may allow extradition. Part One by its own terms yields to any inconsistent treaty provision.[60]

Article I of the Canadian-American extradition treaty[61] lists the crimes to which the treaty is applicable. Neither draft evasion nor desertion have been included in either the treaty's original list of extraditable offenses or in any supplement.[62] Extradition for evasion and desertion are thus not possible under the treaty as presently constituted. In addition, under the treaty the United States could not demand extradition of a fugitive for a listed crime and then try him for desertion or draft evasion, at least without permitting the evader or deserter reason-

53. This provision has been vigorously enforced. *See* Factor v. Laubenheimer, 290 U.S. 276 (1933); In re Wise, 168 F. Supp. 366 (S.D. Tex. 1957); Argento v. Horn, 241 F.2d 258 (6th Cir. 1957), *cert. den.*, 355 U.S. 818 (1957); Ramos v. Diaz, 179 F. Supp. 459 (D. Fla. 1959).

54. Greene v. U.S., 154 F. 401 (5th Cir. 1907), *cert. den.*, 207 U.S. 596 (1907).

55. Ex parte Foss, 102 Cal. 347, 36 P. 669 (1894).

56. Extradition Act, Can. Rev. Stat. c. E-21 (1970).

57. *Id.* § 3.

58. U.S.A. v. Novick, 33 Can. Crim. 401 (Que. Sup. Ct. 1960).

59. U.S.A. v. Stegeman et al., 50 Can. Crim. 23 (B.C. Ct. App. 1966).

60. Extradition Act, Can. Rev. Stat. c. E-21 § 3 (1970).

61. U.S.-U.K. Extradition Treaty, 26 Stat. 1508, T.S. No. 139.

62. Offenses listed in the 1889 treaty were manslaughter, counterfeiting, embezzlement, fraud, perjury, rape, burglary, piracy, mutiny, slavetrading, and complicity in any of the above. Offenses added later were: fraud in obtaining money, destroying railroads, and procuring abortion, Dec. 13, 1900, 32 Stat. 1864, T.S. No. 391 (1901);

able time to leave the United States again.[63] The list of extraditable crimes has been amended before and could be amended again to include these two offenses.

Yet it is by no means clear that extradition would lie in such a case for those who had committed such offenses *before* the amendment of the treaty. Section 12 of the Extradition Act[64] provides that:

> Every fugitive criminal . . . is liable to be apprehended, committed, and surrendered . . . in the manner provided in this Part whether the crime or conviction . . . was committed or took place before or after the date of the arrangement.

By this provision any amendments would be applied retrospectively. But by section 3 of the Extradition Act, this provision does not apply if it contravenes any section of the treaty, and the treaty arguably evinces an intention not to extradite for any offenses not covered by treaty when committed. Article VIII[65] provides that:

> The present convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced prior to the date which the convention shall come into force.

This provision would seem to apply to supplementary agreements as to extraditable offenses, since those agreements provide that they are integral to the treaty.[66] Hence each amendment to the list of extraditable crimes might, like the original list, be read to apply only prospectively. Since no case has raised the point to date, it is unclear whether article VIII would in fact bar retrospective application of an extradition treaty amended to include draft evasion or desertion.

Even if section 12 of the Immigration Act applies and the treaty were amended to include desertion and draft evasion as extraditable offenses, Canada may still refuse extradition of draft evaders under the treaty provision requiring "double criminality."[67] Double criminality requires that the offense, to be extraditable, must be a crime in both the

bribery and bankruptcy law offenses, Apr. 12, 1905, 34 Stat. 2903, T.S. No. 458 (1907); grievous assault of a law officer, May 18, 1908, 35 Stat. 2035, T.S. No. 502 (1908); desertion of dependent children, May 15, 1922, 42 Stat. 2224, T.S. No. 666 (1922); narcotics offenses, Jan. 8, 1925, 44 Stat. 2100, T.S. No. 719 (1925); and deceitfully obtaining money under false pretenses, Oct. 26, 1951, [1952] 2 U.S.T. 2826, T.I.A.S. No. 2454, 206 U.N.T.S. 319.

63. U.S.-U.K. Extradition Treaty, art. III, 26 Stat. 1508, T.S. No. 139.

64. Extradition Act, Can. Rev. Stat. c. E-21 (1970).

65. U.S.-U.K. Extradition Treaty art. VIII, 26 Stat. 1508, T.S. No. 139.

66. *See, e.g.*, art. II, 34 Stat. 2903, T.S. No. 458.

67. Art. I of the 1889 treaty implicitly requires that the offense, to be extraditable, must be a crime in both the United States and Canada, and has been so interpreted in Canadian courts. Ex parte Thomas, [1917] 38 D.L.R. 716 (1917); Washington v. Fletcher [1926] 3 D.L.R. 426 (1926); In re Clark [1929] 3 D.L.R. 737 (1929). All elements of the crime need not be exactly the same. *Id.*

demanding and the asylum states. Since Canada has no military conscription, there is no Canadian offense equivalent to draft evasion, and hence no double criminality as required. Canada does maintain volunteer armed forces, and thus desertion under American law would presumably have its Canadian equivalent.

Finally, the treaty bars extradition for political offenses, leaving it to the asylum state to determine exactly what qualifies as a political offense.[68] But neither desertion nor evasion has ever been so defined. At common law, a definition of political offense has developed which requires that the crime be committed in the course of an attempt to overthrow constituted governmental authority and for the purpose of seizing political control in the state.[69] This definition has been accepted by a Canadian court[70] and no contrary definitions have apparently arisen. Neither draft evasion nor desertion due to opposition to the Vietnam war would seem to qualify as a political offense under this standard.

Part Two of the Extradition Act, as noted above,[71] provides for extradition without recourse to treaty. Yet even under this Part, the American deserter or evader currently appears safe from extradition. Upon executive proclamation invoking Part Two:[72]

> Where no extradition arrangement exists between Her Majesty and a foreign state, or where an extradition arrangement, extending to Canada, exists between Her Majesty and a foreign state, but does not include the crimes mentioned in Schedule III, it is nevertheless lawful for the Minister of Justice to issue his warrant for the surrender to such foreign state of any fugitive offender from that foreign state charged with or convicted of any of the crimes mentioned in Schedule III.[73]

Schedule III lists 22 crimes[74] but does not include either desertion or

---

68. U.S.-U.K. Extradition Treaty, art. II, 26 Stat. 1508, T.S. No. 139, provides that:
> A fugitive criminal shall not be surrendered if the offense . . . be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try and punish him for an offense of a political character.
>
> . . . .
>
> If any question shall arise as to whether a case comes within the provision of this article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

69. In re Castioni, 2 Q.B.D. 149 (1891).

70. In re Fedorenko, 15 W.L.R. 369 (1910).

71. *See* p. 97 *supra*.

72. Extradition Act, Can. Rev. Stat. c. E-21 § 35(1) (1970).

73. *Id.* § 37(1).

74. *Id.* Schedule III includes the following offenses: murder, manslaughter, counterfeiting, forgery, larceny, embezzlement, fraud in obtaining money or goods, rape, abduction, child stealing, kidnapping, burglary, arson, robbery, fraud by a corporate official,

draft evasion. But, unlike Part One, which applies extradition treaties prospectively and retrospectively unless the treaty by its terms provides otherwise,[75] section 36 of Part Two applies "to any crime, mentioned in Schedule III, that is committed *after* the coming into force of this Part . . . ."

Since there has been no proclamation to date invoking Part Two for the benefit of the United States, much less a proclamation revising Schedule III, those deserters and evaders already in Canada would appear safe from extradition under this Part.

In sum, extradition either with or without a treaty does not appear currently available to the United States government to return draft evaders and deserters from Canada.

2. *Extradition from Sweden*

Extradition from Sweden is regulated by the Swedish Extradition Act of 1957.[76] It is the policy of Sweden not to extradite except in accordance with a treaty,[77] but it is not clear whether extradition without treaty is specifically prohibited. However, during the twelve year period from 1951 to 1963, when no extradition treaty existed between the United States and Sweden, extradition did not occur.[78]

The Swedish-American treaty[79] like the Canadian-American treaty provides for extradition only for listed crimes. Article II of the agreement, however, includes in this list neither draft evasion nor desertion.[80] Since article I bars extradition for one offense and trial for another, under the present treaty the United States cannot extradite for a listed crime and then try the fugitive for draft evasion or desertion. There is a further bar regarding desertion. Unlike the Canadian-American treaty, the Swedish-American treaty contains a provision whereby "[e]xtradition shall not be granted . . . when the offense is purely military."[81] While there are no American or Swedish cases interpreting

---

railway crimes, piracy, criminal scuttling of a vessel, assault on board a vessel, revolt on board a vessel, abortion and vicarious liability for any of the above.

75. *See* p. 98 *supra*.

76. Extradition Act of Dec. 7, 1957 (No. 147).

77. Hineback interview, *supra* note 47.

78. Message from the President Transmitting Convention on Extradition with Sweden, Sen. Exec. E, 87th Cong., 2d Sess. 2 (1963).

79. U.S.-Sweden Extradition Treaty, [1963] 2 U.S.T. 1845, T.I.A.S. No. 5496.

80. *Id.* Included offenses are: murder, manslaughter, malicious wounding, kidnapping, rape, abortion, procuration, bigamy, robbery, burglary, arson, damaging railways and other modes of travel, piracy, blackmail, forgery, counterfeiting, embezzlement by a public official, use of mails to defraud, fraud by a fiduciary, bribery, perjury, slave-trading, bankruptcy law offenses, smuggling, narcotics violations, illicit manufacture of poisonous chemicals, attempt to commit the above, and complicity in any of the above.

81. U.S.-Sweden Extradition Treaty, art. V, [1963] 2 U.S.T. 1845, T.I.A.S. No. 5496.

"purely military" offenses under this treaty, the provision appears frequently in extradition treaties and is generally interpreted as applying to violations of the internal rules of a military force, as opposed to common crimes committed against civilians in the course of military operations.[82] Desertion, having no significance outside military organizations, would seem to qualify under the treaty as such a purely military, and thus non-extraditable, offense.

Even if the list of extraditable crimes in article II were amended by mutual consent of the contracting parties, it is not clear that Sweden would be obligated to extradite all evaders. Article V, section 5 of the treaty bars extradition

> [i]f the offense is regarded by the requested state as a political offense or as an offense connected with a political offense.

While it was noted above that common law jurisdictions, including Canada, have developed a definition of political offense which would probably not include desertion or evasion, it does not follow that Sweden would adopt this standard. Generally civil law systems, notably in Europe, have developed an alternate definition of political offense which is more generous to the alien. By this standard a political offense is one committed with predominantly political motives, objectives and circumstances.[83] There appear to be no Swedish decisions on the point and it cannot be asserted with any certainty that Sweden would choose so to define desertion and/or evasion. It should simply be noted that the broad definition would be open to Sweden and that, since the treaty leaves it to the asylum state to determine if the offense is political in nature,[84] the United States would have to accept such a decision, notwithstanding the use of the contrary definition by the United States.

In sum, only a revision of the Swedish-American extradition treaty would permit its use in returning deserters or draft evaders. Moreover, Sweden might consider evasion in the particular circumstances a political offense and deny extradition.

D. Alternatives to Return by Extradition

There remain at least two other methods by which the United States might attempt to obtain the return of its nationals to an area over which

82 *See generally* S. Bedi, Extradition in International Law and Practice 196, 197 (1966).

83. *See, e.g.*, Re Camporini, [1924] 50 S.B.G.I. 229 (Fed. Trib. 1924); Re Kavic, [1952] 78 J. Trib. I. 39 (Fed. Trib. 1952) (Switzerland); Re Fabijan, Sup. Ct., Judgment of March 9, 1933, 67 RGSt. 150 (Germany). *See generally*, S. Sinha, *supra* note 48, at 170–202.

84. U.S.-Sweden Extradition Treaty, art. V(5), [1963] 2 U.S.T. 1845, T.I.A.S. No. 5496.

it exercises jurisdiction. First, the United States can invoke the NATO Status of Forces agreement to effect the return of certain military deserters from Canada.[85] Second, the United States might gain jurisdiction over deserters and evaders through "disguised extradition" in the form of deportation and its variants.

1. The NATO Status of Forces Agreement

Sweden, as a neutral state, is not a signatory to any status of forces agreements with the United States; but under the NATO Status of Forces agreement, the United States can obtain the return from Canada of deserters from American posts in Canada. Article VII of the NATO agreement provides in part that:

> 1(a): [T]he military forces of the sending states shall have the right to exercise within the receiving state all criminal and disciplinary jurisdiction conferred on them by the law of the sending state over all persons subject to the military law of the state.
>
> * * *
>
> 5(a): The authorities of the receiving states shall assist each other in the arrest of members of a force or civilian component and their dependents in the territory of the receiving state and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.[86]

A strict reading of section 5(a) would imply an *obligation* on the part of the receiving state to aid in the arrest and return of a military deserter. Such is not the case. During negotiations for the treaty:

> It was agreed by the Working Group at the suggestion of the Danish representative that the receiving state, upon notification of desertion by the sending state, had the right to search for and arrest any deserter with a view toward handing him over to the sending state. It was not the intention to lay any obligation on the receiving state to take such action but merely to provide that it was entitled to carry it out. It therefore appears from the preparatory works that the receiving state is free to act as it wishes when he [sic] receives appropriate information from the sending state. In fact, states cooperate very actively for [sic] the search for deserters.[87]

Further, the provisions of the NATO agreement have been interpreted as not to be applicable to American deserters from posts outside

85. The Agreements also apply to civilians stationed abroad as part of the military force. *See* note 86 *infra* and accompanying text.

86. Agreement Between Parties to the North Atlantic Treaty Regarding the Status of their Forces, August 23, 1953, [1953] 2 U.S.T. 1792, T.I.A.S. No. 2846, 199 U.N.T.S. 67.

87. S. Lazareff, Status of Military Forces Under Current International Law 118 (1971).

of Canada who take refuge in Canada. The treaty provisions refer only to return of offenders from the receiving to the sending state. No mention is made of third states which might also be party to the agreement. Article I of the agreement defines a military force to include "the personnel belonging to the land, sea and air armed forces of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area *in connection with their official duties* . . ." [emphasis added], and describes a receiving state as the territory of which the force or civilian component is either stationed or in transit.[88] From this, the authorization to search for and return members of visiting military forces can be read to extend only to those members of the force actually *stationed* in the state. Thus, Canada has returned American personnel from bases in Canada (whether to the United States or to American bases in Canada is uncertain) but has not returned servicemen in Canada who deserted from bases outside Canada.[89] It appears that the vast majority of American military deserters in Canada are thus not subject to return to American authorities under the Status of Forces agreement.[90]

2. *Deportation and its Variations*

In theory, deportation is the unilateral act of a state for the protection of its own citizens and interests. In fact, deportation is sometimes used to accommodate other states which cannot or do not wish to resort to formal extradition to bring about the return of a fugitive.[91] This practice holds the gravest hazards for the deserter or evader abroad. The United States has occasionally resorted to deportation in lieu of formal extradition, in the absence of an extradition treaty[92] and in open disregard for an existing treaty.[93] This informal extradition has been practiced in cooperation with Canada at times,[94] but not in any recent cases involving deserters or evaders.

Only when the formal deportation procedures of a state are used does the deserter or evader have a useful opportunity to challenge the depor-

88. "In transit" presumably does not refer to an individual traveling in Canada in order to desert.

89. Rankin interview, *supra* note 20.

90. This analysis would apply to other NATO member states as well.

91. *See generally* O'Higgins, *Disguised Extradition: The Soblen Case*, 27 Mod. L. Rev. 521 (1964).

92. *E.g.*, Egyptian officials placed a fugitive on board a ship bound for the United States. 2 J. Moore, International Law Digest 633 (1906).

93. *E.g.*, United States officials entered Mexico and took custody from Mexican authorities without any extradition proceedings. United States v. Sobell, 142 F. Supp. 515 (S.D.N.Y. 1956), 244 F. 2d 520 (2d Cir. 1956), *cert. den.*, 355 U.S. 873 (1956).

94. Evans, *Acquisition of Custody Over International Fugitive Offenders, Alternatives to Extradition; A Survey of U.S. Practice*, 40 Brit. Y.B. Int'l L. 77 (1964).

tation. The procedures followed by the asylum state thus become crucial. Deportation of evaders or deserters from Canada or Sweden to the United States is unlikely for several reasons. First, deportation requires the cooperation of the asylum state. Second, under both the Canadian and Swedish statutes, deportation is not generally committed to executive discretion.[95] A deportation order in these countries will issue only for cause. Finally, both states have established procedural safeguards to protect the alien from abuse of the deportation process.

Under the Canadian Immigration Act[96] there are three general categories of deportable aliens. First, those who enter Canada illegally, or use fraud in their application, are subject to deportation.[97] The second category consists of those who, once in Canada, are convicted of offenses under the Canadian Criminal Code[98] or of certain crimes against Canada such as subversion, espionage, or disloyalty.[99] Section 18(d) of the Act renders deportable aliens who are convicted of violations of the Narcotics Control Act.[100] Third, section 18(e)(v) makes an alien subject to deportation who

> [h]as, since his admission to Canada become a person who, *if he were applying for admission to Canada would be refused admission* by reason of his being a member of a prohibited class. . . . [emphasis added]

This section makes subject to deportation an alien who did not fall into any prohibited class at entry and has not committed any violations of Canadian law. It gives the Canadian government the power to deport groups of aliens who have not breached any laws, but who are classed as undesirables, since section 57(g) of the Act permits the executive to make rules as to prohibited classes on the basis of:

> (i) nationality, citizenship, ethnic group, occupation, class or geographical area of origin,
> (ii) peculiar customs, habits, modes of life or methods of holding property,
> (iii) unsuitability, having regard to the climate, economic, social, industrial, labor, health or other conditions . . . .

When a deportation order has issued, the Immigration Appeals Board Act[101] provides that:

---

95. Section 34 of the Swedish Aliens Act of April 30, 1954 (No. 193) apparently empowers the King-in-Council (Executive) to extradite without reference to other sections of the Act in extraordinary circumstances involving a threat to the national security.

96. Immigration Act, Can. Rev. Stat. c. I-2 (1970).

97. *Id.* § 18(e) (vi-x).

98. *Id.* § 18(e) (ii).

99. *Id.* § 18(s) (a-c).

100. Narcotics Control Act, Can. Rev. Stat. c. N-1 (1970).

101. Immigration Appeals Board Act, Can. Rev. Stat. c. I-3, § 11 (1970).

> [a] person against whom an order of deportation has been made under the Immigration Act may appeal to the Board on any ground of appeal that involves a question of law or fact or mixed law and fact.

The Board has exclusive jurisdiction[102] but the decisions of the Board can be reviewed as to matters of law by the Canadian Supreme Court, if that Court grants leave to appeal.[103]

The Immigration Appeals Board has wide discretion to set aside deportation orders. The Board may, having regard to all the circumstances of the case, including the "existence of compassionate or humanitarian considerations that in the opinion of the Board warrant the granting of special relief,"[104] stay or quash a deportation order and allow the alien to remain in Canada subject to such conditions as it sees fit.[105]

Even if the American deserter or evader were ordered deported, he would not necessarily be returned to the United States. The Immigration Appeals Board Act gives the Immigration Minister discretion to deport the alien to his home country or to another country,[106] while section 33(2) of the Act provides that

> [u]nless otherwise directed by the Minister or Immigration Officer in charge, a person against whom a deportation order has been made may be requested or allowed to leave Canada voluntarily.

This provision would give the deserter or evader the opportunity to leave Canada for some other sanctuary, assuming another country would allow him to enter.

The deportation policy of Sweden is comparable to that of Canada. The Aliens Act[107] provides for deportation for those who (a) cannot support themselves, (b) become dangerous alcoholics, (c) fail to meet their social obligations or (d) are convicted of crimes outside of Sweden and might be expected to repeat those crimes in Sweden.[108] Those who give false information in applying for entry are likewise deportable.[109] Further, a court which has convicted an alien of an offense punishable by imprisonment can also order his deportation.[110]

In addition to the courts, local county administrations as well as the National Immigration Office and the King-in-Council (the national

---

102. *Id.* § 22.
103. *Id.* § 23.
104. *Id.* § 15(1)(b)(ii).
105. *Id.* § 15(2).
106. Immigration Act, Can. Rev. Stat. c. I-2, § 33(1).
107. Aliens Act of April 30, 1954 (No. 193). *See* note 35 *supra.*
108. *Id.* § 29(1-4).
109. *Id.* § 50.
110. *Id.* § 26.

executive) can instigate deportation proceedings.[111] Deportation orders by lower bodies must be approved by the National Immigration Office, which functions with the advice of an independent Aliens Board,[112] and which, along with the King-in-Council, has discretion to void deportation orders.[113] Section 44 of the Act provides for appeal to the National Immigration Office, and section 46 allows appeals to the King-in-Council. At all stages of the proceedings the alien is entitled to a hearing, notice of the results, a summary of reasons, and information as to how to prosecute an appeal.[114] The Aliens Decree[115] provides for counsel for the alien at state expense in some cases.[116]

As in Canada, the alien in Sweden may leave voluntarily[117] and only where it appears that the alien will not voluntarily obey the deportation order will coercive deportation occur.[118] Sweden has forcibly returned to American jurisdiction deserters convicted of a criminal offense while in Sweden.[119]

F. Conclusion

This Comment has thus far examined the major legal obstacles which the American deserter or draft evader faces in attempting to take refuge in Canada or Sweden, and the obstacles the United States would face if it attempted to gain jurisdiction over him. Neither the Swedish nor the Canadian extradition treaties with the United States requires extradition of deserters or draft evaders. Thus, with the limited exception of certain deserters in Canada who may be reached through the NATO Status of Forces Agreement, the status of the deserter or draft evader who wishes to take refuge in Canada or Sweden turns on the discretion of the asylum state. This discretion has operated largely in favor of both deserters and evaders in Canada, whose immigration policy operates without discrimination against the deserter and evader, and in favor of certain deserters and evaders in Sweden, where immigration barriers more difficult than those of Canada have been specially eased. Consistent with their immigration policies, Canada and Sweden do not deport deserters or draft evaders to the United States or elsewhere merely because they are deserters or evaders.

---

111. *Id.* §§ 30, 31(2).
112. *Id.* § 3.
113. *Id.* § 30.
114. *Id.* §§ 31, 33.
115. Aliens Decree of May 23, 1969 (No. 136). *See* note 35 *supra.*
116. *Id.* § 86.
117. *Id.* § 68.
118. *Id.* § 73.
119. Joseph Parra, a deserter from an American base in Germany, was deported to the United States after conviction and imprisonment in Sweden for narcotics violations. *See* Lindin, *Yale Deserter,* Yale Alumni Magazine, February, 1971 at 12.

The current benevolence of these two countries, however, cannot alter the uncertainty inherent in dependence on another nation's discretion. Admitting and harboring another nation's military deserters and draft evaders involves both the domestic and foreign policies of the asylum state. The Swedish and Canadian immigration policies toward American deserters and evaders conflict with the United States' interests in punishing violators of its laws and in raising and maintaining armed forces. The asylum states might decide at some future date that this affront to American interests is no longer in their best foreign policy interests. Independent of this foreign policy consideration, deserters and draft evaders might be unwelcome in the future, should harboring them become no longer consistent with the asylum state's domestic interests. For either domestic or foreign policy reasons, Canada or Sweden, or both, might deem it in their respective interests to tighten their immigration and deportation policies. Procedural safeguards in both Canada and Sweden afford protection against deportation for deserters and evaders residing legally in those countries, but illegal residents could be more easily expelled, and further immigration could be curtailed.

It appears highly unlikely that Canada, Sweden, or any other nation would bind itself to an international agreement rendering more secure the status of deserters and evaders seeking refuge abroad. Nations are unlikely to limit the flexibility of their foreign and domestic policies by restricting themselves to international standards for the benefit of deserters and draft evaders. [D.W.J.]

PUNISHMENT UPON RETURN

Deserters and draft evaders who return to the United States face a variety of statutory and administrative sanctions, the application of which is often contingent upon official discretion or upon the circumstances of each case. Sanctions applicable to deserters are imposed by military administrators or courts-martial, whereas sanctions against draft evaders are imposed by civilian courts and administrative agencies applying immigration and selective service laws.

A. Sanctions Against Deserters

The Uniform Code of Military Justice (U.C.M.J.) defines a deserter as "any member of the armed forces who . . . [w]ithout authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently."[120] Although the U.C.M.J. gives the courts-martial broad discretion in selecting a penalty for this

120. 10 U.S.C. § 885(a)(1) (1970).

31-658 O - 74 - 8

offense,[121] the guidelines established by the President in the Manual for Courts-Martial, which are binding on the courts-martial,[122] include a maximum penalty of five years confinement at hard labor plus a dishonorable discharge.[123] The penalty for an absence without leave (A.W.O.L.) of more than thirty days, which differs from desertion since there is no intent to remain away permanently, is one year's confinement at hard labor plus a dishonorable discharge.[124]

No official data is available to the public concerning the average sentences served by those found guilty of desertion or long-term A.W.O.L.[125] However, there is evidence that treatment of deserters by courts-martial is varied and inconsistent,[126] and that very few actual deserters are ever convicted of the offense of desertion.[127] The Subcommittee on the Treatment of Deserters of the Senate Armed Services Committee found that during fiscal 1968 less than 0.5% of those men dropped from their unit rolls as deserters were eventually convicted of the offense of desertion.[128]

There are many reasons for this extremely low rate of desertion convictions. First, it is difficult for the prosecutor to prove the element of intent to remain away permanently which is essential to a desertion conviction. Although the Manual for Courts-Martial provides that prolonged absence will give rise to a presumption of intent to remain away permanently,[129] the landmark case of *United States v. Cothern*[130] held that the duration alone of the absence is not enough from which to infer intent to remain away permanently.[131] As a result, a prosecutor must now bring in witnesses to prove the necessary intent, which requires additional time and expense to the military. Most prosecutors,

---

121. 10 U.S.C. § 885(c) (1970).

122. "The limitations imposed by the President are in effect until such time as he suspends or modifies them, or upon a declaration of war." Manual for Courts-Martial, ch. 25, § 125 (rev. ed. 1969).

123. *Id.* Table of Maximum Punishments, 25-11, § 127c.

124. *Id.*

125. Letter from K. A. Konopisos, Captain, J.A.G.C., U.S. Navy, Mar. 25, 1971; Letter from Robert E. Miller, Colonel, J.A.G.C., Chief, Military Justice Division, Department of the Army, April 16, 1971. These letters are on file at the Harvard International Law Journal.

126. *See, e.g.*, N. Y. Times, May 1, 1969, at 6, col. 1.

127. S. Rep. No. 93, 91st Cong., 1st Sess. 26 (1969).

128. *Id.* This represented a total of approximately 37 army and 20 navy personnel convicted of desertion in fiscal 1968, based on total numbers of persons dropped from the rolls during this period. *See Hearings Before the Subcomm. on The Treatment of Deserters from the Military of the Sen. Comm. on the Armed Services,* 90th Cong., 2nd Sess. 24 (1968).

129. Manual for Courts-Martial at 28-11 (§ 164a) (rev. ed. 1969).

130. 23 C.M.R. 383 (1957).

131. Formerly, the necessary intent was presumed from an absence of 9 months to one year or more. Anonymous interview with Captain, U.S. Army, Fort Devens, Mass., Apr. 12, 1971 [hereinafter cited as Interview].

therefore, usually seek convictions for A.W.O.L., which is easy to prove and requires no witnesses.[132] Another common practice is to grant "undesirable" discharges administratively to those deserters who have been absent for over one year.[133] This procedure avoids not only the trouble and expense of a long trial, but also the necessity of finding a deserter and returning him to the correct military jurisdiction for court-martial. Although the Subcommittee on the Treatment of Deserters denounced both the granting of undesirable discharges in absentia and the trying of deserters for a lesser offense,[134] it appears that these practices still continue.[135]

B. Sanctions Against Draft Evaders

Some of the draft evaders presently living abroad have violated no United States laws. Among these exiles are those who, prior to violating any provision of the Selective Service Act,[136] renounced their American citizenship abroad in the presence of an appropriate American consular official.[137] Such expatriates, now formally aliens, face a special problem created by United States immigration laws. Under this legislation, these expatriates become excludable aliens who may be deported upon return to the United States, since they will have "departed from or . . . remained outside the United States to avoid or evade" the draft during time of national emergency.[138] There are defenses available to these persons if they try to return to this country and deportation proceedings are brought against them.[139] For example, they may claim that their

132. The length of unauthorized absences can be easily found in records kept at military bases. *Id.*

133. This practice has been authorized by Department of Defense Directive 1332.14, para. VII(j) (1965). *See also* S. Rep. No. 93, 91st Cong., 1st Sess. at 25ff. (1969); Lynch, *The Administrative Discharge: Changes Needed?*, 22 Me. L. Rev. 141 (1970).

134. S. Rep. No. 93, 91st Cong., 1st Sess. at 26, 31, 32 (1969).

135. Interview, note 131 *supra.*

136. 50 U.S.C. App. §§ 451–473 (1970).

137. 8 U.S.C. § 1481(a)(6)(i) (1970). A similar provision, 8 U.S.C. § 1481(a)(10) (1970), which provides that American citizenship is automatically forfeited by leaving or remaining away from this country during time of war or national emergency in order to avoid military service, has recently been held unconstitutional by the Supreme Court on the ground that the automatic forfeiture results in a denial of due process. Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963).

138. 8 U.S.C. § 1182(a)(22) (1970). The national emergency declared by President Truman, Proc. No. 2914, 3 C.F.R. 99 (1949–1953 Comp.), 64 Stat. A 454, remains in effect today. *See* Nielsen v. Secretary of the Treasury, 424 F.2d 834, 839 (D.C. Cir. 1970). Succeeding presidents have acknowledged the continuing existence of this national emergency. *See, e.g.*, Exec. Order No. 10905, 3 C.F.R. 436 (1959–1963 Comp.) (President Eisenhower); Exec. Order No. 11387, 3 C.F.R. 448 (1971) (President Johnson).

139. For a general discussion of the range of administrative and penal sanctions which evaders may face, and the scope of the defenses available to them for avoiding such sanctions, *see generally* Comment, *supra* note 2, at 8–21. *See also* Jolly v. Immigration

renunciation of citizenship was involuntary,[140] or they may challenge the allegation that they left or remained away from the country in order to evade the draft.[141] However, most defenses are as yet largely untested.[142]

The majority of draft evaders outside the country have violated some provision of the Selective Service Act of 1967,[143] which was in effect when nearly all of these exiles left the country. The maximum penalty which this group faces upon return is five year's imprisonment or a $10,000 fine, or both.[144] The courts have declared this penalty not to be cruel, excessive, or unusual, and they have not hesitated to apply it.[145]

Local draft boards do not generally turn the name of a violator over to the appropriate U.S. Attorney until the draftee has refused induction orders three or four times.[146] The U.S. Attorney must then decide

---

and Naturalization Service, 441 F.2d 1245 (5th Cir. 1971), *cert. den.*, — U.S. —, 40 U.S.L.W. 3220 (Nov. 8, 1971); N. Y. Times, Apr. 14, 1971, at 6, col. 1; Nov. 15, 1971, at 1, col. 6.

140. A recent federal court decision suggests that this defense is extremely limited. In Jolly v. Immigration & Naturalization Service, 441 F.2d 1245 (5th Cir. 1971), *cert. den.*, — U.S. — (1971), 40 U.S.L.W. 3220 (Nov. 9, 1971), petitioner Jolly formally renounced his citizenship before the United States Consul in Toronto in May of 1967. Prior to March of 1968, Jolly returned to the United States. Deportation proceedings were brought against him pursuant to 8 U.S.C.A. § 1251(a)(1) as an excludable alien, alleging that he had entered this country without a valid visa, 8 U.S.C.A. § 1182(a)(20), and had left and remained away during a period of national emergency to avoid the draft under 8 U.S.C.A. § 1182(a)(22). He was ordered to depart by a Special Inquiry Officer, whose decision was affirmed by the Board of Immigration Appeals. Jolly appealed for review under 8 U.S.C.A. § 1105(a), arguing *inter alia* that (1) his renunciation was not "voluntary," as required by cases interpreting § 1481(a)(6), because it was made under duress due to his opposition to the war; and (2) that even if he was an alien, he had entered the United States lawfully as an alien married to a citizen and "otherwise admissible at the time of entry" under 8 U.S.C.A. § 1251(f).

The Fifth Circuit Court of Appeals found that Jolly's renunciation was voluntary, and that he was not "otherwise admissible," since he had remained outside the United States to avoid service in the armed forces during a period declared by the President to be a national emergency. 8 U.S.C.A. § 1182(a) (22). That is, the court held that Jolly was in fact an alien by virtue of his own renunciation, and that he was excludable, notwithstanding § 1251(f), since he had remained in Canada to avoid the draft. It is reported that Jolly will "not ask the Supreme Court to reconsider its refusal to hear his case." N. Y. Times, Nov. 23, 1971, at 5, col. 3.

141. This presumption of intent to avoid the draft is not easily rebutted. *See* Comment, *supra* note 2 at 8–9.

142. *See id.* at 8–21.

143. 50 U.S.C. App. §§ 451–73 (1970).

144. 50 U.S.C. App. § 462(a) (1970). By contrast, the maximum penalty for violation of the nation's first Selective Service Act was only one year imprisonment. Selective Service Act of 1917, ch. 15, §§ 5, 6, 40 Stat. 76.

145. Cooper v. United States, 403 F.2d 71 (10th Cir. 1968) (5-year sentence); Quaid v. United States, 386 F.2d 25 (10th Cir. 1967) (5-year sentence, conviction reversed on other grounds); Kramer v. United States, 147 F.2d 756 (6th Cir. 1945) (5-year sentence).

146. Survey conducted by the Selective Service System, N. Y. Times, Apr. 16, 1971, at 15, col. 1.

whether or not to seek an indictment.[147] Very often he will promise not to prosecute if the violator will submit to induction.[148] However, the U.S. Attorney has broad discretion in this matter, and once he decides to prosecute, the risk of conviction is extremely high. During fiscal 1970, less than 20% of those who were charged with draft-related offenses and whose cases were not dismissed were acquitted.[149]

The average sentence for Selective Service offenses in fiscal 1970 was 33.5 months,[150] down slightly from the two previous years.[151] This is higher than the average sentences for draft offenses in 1945 and in 1952, and it is more than 50% higher than the average sentence in 1965.[152] However, more than 50% of those convicted during fiscal 1970 received probation only,[153] up from 39% in 1969 and 10% in 1967.[154] In addition, parole is granted more frequently to persons serving terms for draft offenses than to other federal offenders, and draft offenders are generally paroled after serving about half their term.[155]

C. Conclusion

Most deserters face certain conviction upon return for the offense of absence without leave for more than thirty days. These men will probably receive penalties of up to one year's confinement at hard labor plus a dishonorable discharge and its attendant social disadvantages. Apparently, very few of the deserters who remain abroad will ever be tried and convicted of the offense of desertion. Many deserters living abroad have already been given undesirable discharges by which the armed services have forfeited jurisdiction over them. The results of these discharges, of course, include loss of veterans' benefits and perhaps some

147. 32 C.F.R. § 1642.42 (1970); *see generally* Comment, *supra* note 2, at 2–3.

148. Letter from Robert C. Mardian, Assistant Attorney General, Internal Security Division, U.S. Department of Justice, Sept. 23, 1971, on file at the Harvard International Law Journal. *See* N. Y. Times, Apr. 16, 1971, at 15, col. 1. During fiscal year 1970, 56% of the 2833 defendants charged with draft-related offenses had their cases dismissed. Administrative Office of the United States Courts, *Federal Offenders in the District Courts*, Table D-4 (1970) [hereinafter cited as *Federal Offenders*]. This was presumably in return for submission to induction. N. Y. Times, Aug. 30, 1970, at 24, col. 1. *Cf.* 32 C.F.R. § 1643.1–3 (1971), providing that convicted draft violators may be paroled in return for submission to induction into the armed services or to some form of alternative service.

149. *Federal Offenders*, Table D-5. And, of course, most of those acquitted are presumably subject to the draft anew. For a discussion of the defenses available to draft evaders, *see* Comment, *supra* note 2, at 21–24.

150. *Federal Offenders*, Table D-5.

151. *Id.* Table H-10 at 190.

152. *Id.*

153. *Id.* Table D-5.

154. *Id.* at 26.

155. Comment, *Sentencing Selective Service Violators: A Judicial Wheel of Fortune*, 5 Colum. J. Law & Soc. Prob. 164, 169 (1969).

difficulty in securing employment in the United States. However, no member of this class of offenders will lose his citizenship.[156]

With respect to draft evaders, past statistics would indicate that roughly 50% of the delinquent draft evaders who decide to return to the United States will be inducted into the armed services, approximately 25% will spend an average of 20 months in prison followed by a term on parole and all the permanent disadvantages of a criminal record, and between 15% and 20% will be convicted and placed on probation, with the same disadvantages of a criminal record. Less than 10% will be tried and acquitted of their draft-related offenses.

There is no statute of limitations which would benefit deserters or draft evaders because, under federal law, "no statute of limitations shall extend to any person fleeing from justice."[157] [D.L.R.]

PRESIDENTIAL OR CONGRESSIONAL AMNESTY

The penalties attached to the offenses of exiled deserters and draft evaders make it unlikely that a significant number of them will return to this country voluntarily. Moreover, the United States apparently cannot force the return of these exiles, and international agreements facilitating their return are probably not forthcoming. Consequently, if the decision is made that these exiles should be repatriated, perhaps the only means of doing so is to grant them amnesty in some form.

The question of amnesty for deserters and draft evaders has already provoked much discussion.[158] Groups which have recommended amnesty for draft evaders and/or deserters include a Michigan Democratic Convention,[159] a convention of Americans for Democratic Action,[160] and President Nixon's White House Conference on Youth.[161] Presidential candidate George McGovern has announced that if elected, he

156. Even deserters who are convicted of desertion no longer lose their rights of citizenship. 8 U.S.C. § 1481(a)(8) (1970), which provided that rights of citizenship were forfeited upon conviction for desertion, was held unconstitutional by the Supreme Court in Trop. v. Dulles, 356 U.S. 86 (1958). Four members of the Court characterized this loss of citizenship as cruel and unusual punishment violative of the 8th amendment to the Constitution.

157. 18 U.S.C. § 3290 (1970).

158. *See, e.g.*, Reston, *A Proposal to the President: Vietnam Amnesty*, The New Republic, Oct. 9, 1971, at 21; Gara, *Amnesty and Reconciliation*, Friends Journal, Dec. 1, 1969, at 676; U.S. News and World Report, Dec. 1, 1969, at 15; N. Y. Times, July 9, 1971, at 30, col. 3; July 25, 1971, at 10, col. 4; letters to Rep. Koch, 116 Cong. Rec. (H.R.) 111ff. (daily ed. Jan. 21, 1970) and 116 Cong. Rec. (H.R.) 1035 (daily ed. Feb. 18, 1970).

159. N. Y. Times, Aug. 24, 1970, at 13, col. 1.

160. N. Y. Times, May 4, 1970, at 9, col. 1.

161. Task Force on the Draft, National Service, and Alternatives, White House Conference on Youth, *Recommendation V*, at 7 (1971). In addition, a group of 16 noted academicians recently petitioned the President and Congress for an amnesty for deserters and draft evaders. N. Y. Times, Oct. 19, 1971, at 31, col. 4.

will grant full and unconditional amnesty to draft evaders abroad or in jail.[162] In addition, legislation concerning amnesty for draft evaders has been introduced in both houses of Congress. On December 14, 1971, Senator Robert Taft, Jr., introduced a bill offering amnesty to draft evaders on the condition that they enlist for three years in the armed forces or perform three years of alternative government service.[163] Under this proposal convicted draft evaders could subtract up to two years' time served in prison from the three years' required service. Senator Edward Kennedy had previously suggested in his proposed Selective Service Act of 1971[164] that President Nixon study the appropriateness of amnesty for draft evaders. Congressman Edward I. Koch, (D.-N.Y.), has recently introduced one bill[165] expanding the conscientious objector status within § 6(j) of the Selective Service Act[166] so as to include conscientious opposition to participation in a particular war, and another[167] providing that all persons in military service, in jail, or in exile be given the opportunity to return to full civilian status and claim exemption from military service as selective conscientious objectors. To date, no hearings have been held on any of these bills.

The purpose of this discussion is to define the scope of the pardoning power of the President and of Congress, to consider the ways in which this power has been exercised in the past, and to examine the factors confronting the President or Congress in deciding whether to grant amnesty to deserters and draft evaders in the near future. The term "amnesty" as used here refers to the remission of punishment with respect to a named class of offenders, without regard to their personal identities or individual circumstances. A "pardon," on the other hand, is a remission of punishment with respect to a named individual or a group of named individuals. A "partial" pardon or amnesty remits less than the full punishment, and a "conditional" pardon or amnesty makes

---

162. Statement of Senator George McGovern, News Conference, Washington Press Club, Washington, D. C., Sept. 23, 1971.

163. S. 3011, 117 Cong. Rec. S21588–89 (daily ed. Dec. 14, 1971). *See* N. Y. Times, Dec. 15, 1971, at 4, col. 3. Senator Taft would have alternative service include VISTA, Veterans Administration hospitals, Public Health Service hospitals, and other services provided by appropriate regulation.

164. S. 483, 117 Cong. Rec. S576, S587–88 (daily ed. Jan. 29, 1971).

165. H.R. 831, 92nd Cong., 1st Sess. (1971).

166. 50 U.S.C. App. § 456(j) (1970). The Supreme Court recently construed this provision as not including persons who object to participation in a particular war. Gillette v. United States, 403 U.S. 437 (1971).

167. H.R. 832, 92nd Cong., 1st Sess. (1971). *See also, Statement of Rep. Edward I. Koch, Hearings on the Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels Before the House Comm. on the Armed Services,* 92nd Cong., 1st Sess. 507 (1971). Congressman Koch first publicly raised the issue of amnesty following a trip to Canada in 1969. *See* 116 Cong. Rec. H. R. 111 (daily ed. Jan. 21, 1970); N. Y. Times, Jan. 2, 1970, at 15, col. 1.

the pardon or amnesty conditional on the performance or non-performance of specified acts.

A. The President's Power to Pardon[168]

The Constitution gives the President the power "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."[169] The Supreme Court stated in *Ex Parte Garland* that except for impeachment, the President's pardoning power "extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."[170]

In *Garland* the Supreme Court ruled that Congress cannot interfere in any way with the President's exercise of his power; it can neither limit the effect of a presidential pardon, nor exclude any persons from it.[171] *Garland* concerned the petition of an attorney to practice in the federal courts without taking an oath prescribed by Congress.[172] In taking the oath, Garland would have had to swear that he had never served in the Confederacy in any official capacity. He was unable to take this oath. In July of 1865, however, he received a full pardon from President Johnson for all offenses related to his participation in the Confederate rebellion. The Supreme Court held that the congressional acts involved could not apply to Garland, for their application would restrict the President's power to pardon. Thus, the Court refused to limit the President's pardoning power as applied to the grave offense of treason. However, after *Garland* the question of the President's power to grant amnesty to a class of offenders, rather than a pardon to a named offender, presumably remained open.

1. The President's Power to Grant Amnesty

The President's power to grant amnesty was hotly contested during the Civil War and Reconstruction period. In 1862 Congress felt that it was necessary to authorize the President to grant amnesties, and it did so in

---

168. *See generally* W. Humbert, The Pardoning Power of the President (1941); Comment, *The Pardoning Power of the Chief Executive*, 6 Ford. L. Rev. 255 (1937); Bonaparte, *The Pardoning Power*, 19 Yale L.J. 603 (1910); Jones, *Clemency in the United States Army*, 49 Case & Com., no. 2, 14 (Winter, 1943–44); Chapman, *Presidential Pardons*, 1957 J.A.G. J. 7 (May, 1957).

169. U.S. Const. art. II, § 2.

170. Ex Parte Garland, 71 U.S. (4 Wall.) 333, 380 (1866).

171. *Id.* at 381.

172. Act of July 2, 1862, ch. 128, 12 Stat. 502; Act of Jan. 24, 1865, ch. 20, 13 Stat. 424.

an Act of July 17, 1862.[173] However, when President Lincoln proclaimed his first amnesty for Confederate supporters in 1863,[174] he denied that his authority to do so was in any way derived from Congress, stating that the Constitution gave him "absolute discretion" in the matter.[175] President Johnson agreed with this position,[176] but in 1867 Congress repealed[177] its authorization in an attempt to prevent President Johnson from granting further amnesties to former Confederate personnel.[178] When President Johnson went ahead with a full, unconditional amnesty for all former Confederates in 1868,[179] the Radicals in Congress insisted that he had no authority to do so.[180] In 1869 the Senate Judiciary Committee submitted a report declaring that the President had no power to grant amnesties.[181] Their reasoning was that there is a clear distinction between the concepts of pardon and amnesty; that the framers of the Constitution were aware of this distinction; and that they would have used both words if they had wanted to give the President the power to grant amnesties. A scholarly article of the time convincingly rebutted this argument and presented evidence of the intention of the members of the Constitutional Convention to include amnesties within the President's pardoning power.[182]

The dispute culminated in the Supreme Court decisions of *United States v. Klein*[183] and *Armstrong v. United States*.[184] In both cases claimants sought the recovery of property captured by Union forces during the Civil War. Congress had provided[185] for the restoration of such property if a claimant could prove that he had never given aid or comfort to the rebels. The Court ruled that since each claimant had benefitted from a presidential amnesty[186] restoring all property rights,

173. Ch. 195, § 13, 12 Stat. 589 (1862).

174. Proc. of Dec. 8, 1863, 13 Stat. 737.

175. Third Annual Message to Congress, Dec. 8, 1963, 6 The Messages and Papers of the Presidents, 1789–1894, 188–89 (J. Richardson ed. 1896) [hereinafter cited as *Messages*].

176. Message to the Senate, Jan. 18, 1867, *id.* at 697.

177. Act of Jan. 21, 1867, ch. 8, 14 Stat. 377.

178. He had already granted two: Proc. of May 29, 1865, 13 Stat. 758; Proc. of Sept. 7, 1867, 15 Stat. 609.

179. Proc. of Dec. 25, 1868, 15 Stat. 711.

180. *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 2470, 2511–12, 2532–37, 2914–21 (1865); 39th Cong., 2nd Sess. 8, 9, 14, 15, 143–45, 267–69, 273–74 (1866).

181. S. Rep. No. 239, 40th Cong., 3rd Sess. (1869).

182. L. C. K., *The Power of the President to Grant a General Pardon or Amnesty for Offenses Against the United States*, (pts. 1–2), 8 Am. L. Reg. (New Series) 513, 577 (1869).

183. 80 U.S. (13 Wall.) 128 (1872).

184. 80 U.S. (13 Wall.) 154 (1872).

185. Abandoned and Captured Property Act, ch. 120, 12 Stat. 820 (1863).

186. The deceased Wilson, whose estate was administered by Klein, had taken the oath required by President Lincoln's conditional amnesty of Dec. 8, 1863. *See* notes 174 and 175 *supra*. Mrs. Armstrong benefitted from the full and unconditional amnesty granted by President Johnson on December 25, 1868. *See* note 179 *supra*.

prior loyalty to the Union need not be proven. In *Klein* the Court gave no weight to Congress' repeal[187] of its 1862 authorization[188] of presidential amnesties, stating that the original authorization was merely a "suggestion" and not "authority."[189] The Court further held unconstitutional a later Act of Congress[190] which barred evidence of presidential pardons or amnesties in support of any claim against the United States, on the ground that Congress could not change the effect of presidential pardons or amnesties.[191] The Court ruled expressly in both *Klein*[192] and *Armstrong*[193] that the President's power to pardon includes the power to grant amnesties; and that courts must give effect to such amnesties.

2. *The President's Power to Grant Conditional Pardons and Amnesties*

In addition to his power to grant pardons and amnesties, the President also has the power to grant conditional pardons or amnesties. In *Ex Parte Wells*[194] the Supreme Court upheld a pardon which President Fillmore had granted to a convicted murderer on the condition that he submit to imprisonment for life in place of his death sentence. The Court reasoned that the President's power to grant full pardons necessarily included the power to grant less than full pardons. Other examples of the federal courts' upholding of conditional pardons include *In Re Ruhl*,[195] in which the condition had been payment of certain fines and costs; *Kavalin v. White*,[196] where the condition was deportation of the prisoner from the United States; and *United States v. Six Lots of Ground*,[197] where a prisoner was pardoned on the condition that he refrain from pressing certain claims against the government for land which had been confiscated. And although the Supreme Court has made few pronouncements in this area, it seems clear that the President has the authority to attach to a pardon any condition he wants, so long as the condition is not illegal in nature or impossible to fulfill.[198]

187. *See* note 177 *supra* and accompanying text.
188. *See* note 173 *supra* and accompanying text.
189. 80 U.S. (13 Wall.) at 139.
190. Act of July 12, 1870, ch. 251, 16 Stat. 235.
191. 80 U.S. (13 Wall.) at 148. The Court also held the Act unconstitutional because of its interference with the judicial branch of the Government. In *Klein* the Act, as applied, could have opened up a final judgment of the Court of Claims which was made before the Act came into effect.
192. *Id.* at 147.
193. 80 U.S. (13 Wall.) at 156.
194. 59 U.S. (18 How.) 307 (1856).
195. 20 F. Cas. 1335 (No. 12,124) (D.C. Nev. 1878).
196. 44 F.2d 49 (10th Cir. 1930).
197. 27 F. Cas. 1097 (No. 16,299) (C.C. La. 1872).
198. *Id.* at 1098. *Accord*, Kavalin v. White, 44 F.2d 49, 51 (10th Cir. 1930).

If the grantee violates the condition, the pardon becomes void and the original penalty or prosecution is enforced.[199]

The President's power to grant conditional amnesties, as opposed to conditional pardons, was upheld by the Supreme Court in *United States v. Klein*.[200] Although the Court did not use the word "amnesty" in reaffirming the principle that the President can "annex to his offer of pardon any conditions or qualifications he should see fit,"[201] the presidential act which the Court enforced in *Klein* was a conditional amnesty.[202] Other conditional amnesties[203] have been granted by American Presidents, and their power to grant them has never been questioned in the courts.

3. *The Effects of a Full Presidential Pardon*[204]

In *Ex Parte Garland*[205] the Supreme Court stated that a full pardon "blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense . . . . [I]t removes the penalties and disabilities and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."[206] Presumably, this rationale applies as well to a full amnesty. The Supreme Court, in discussing the legal effects of President Johnson's full and unconditional amnesty of 1868,[207] stated in *Knote v. United States*[208] that "the distinction between [pardon and amnesty] is one rather of philological interest than of legal importance."[209]

---

199. People v. Potter, 1 Parker Cr. Rep. 47 (N.Y. 1846); People v. Burns, 77 Hun. 92, 28 N.Y. Supp. 300 (Sup. Ct. 1894), *aff'd*, 143 N.Y. 665, 39 N.E. 21 (1894).

200. 80 U.S. (13 Wall.) 128 (1871). *See* pp. 115-16 *supra*.

201. 80 U.S. (13 Wall.) at 142.

202. *See* note 174 *supra* and accompanying text. The difference between the terms "pardon" and "amnesty" breaks down in the area of conditional amnesties because of the need for individual enforcement. For although the presidential proclamation is an "amnesty," pertaining to an entire class of offenders, each individual offender must report to the authorities to perform the condition attached to the amnesty, *e.g.*, to take an oath. When the condition is performed it is as if the offender received an individual pardon.

203. *See, e.g.*, Proc. of May, 1865, 13 Stat. 758 (Pres. Johnson, reiterating Pres. Lincoln's amnesty proclamation of 1863); Proc. of Jan. 4, 1893, 27 Stat. 1058 (Pres. Harrison, regarding amnesty for Mormons convicted of bigamy, polygamy and unlawful cohabitation); Proc. of Sept. 25, 1894, 28 Stat. 1257 (Pres. Cleveland, reiterating Pres. Harrison's amnesty proclamation of 1893).

204. *See* Williston, *Does a Pardon Blot Out Guilt?*, 28 Harv. L. Rev. 647 (1915); Note, *Legal Effect of a Pardon*, 13 Colum. L. Rev. 418 (1913).

205. 71 U.S. (4 Wall.) 333 (1866).

206. *Id.* at 380–81. *See* Knote v. United States, 95 U.S. 149, 153 (1877).

207. *See* note 179 *supra*.

208. 95 U.S. 149 (1877).

209. *Id.* at 153.

Although an amnesty or pardon "restores [the grantee] to all his civil rights," the restoration of rights is not absolute.[210] A pardon or amnesty will not result in any compensation by the government for punishment suffered prior to the pardon or amnesty,[211] nor will it affect any rights vested in a third party as a result of the pardoned offense.[212] In addition, a pardon or amnesty will not restore certain legal rights. For example, the pardoned offense may be raised in some jurisdictions in order to impeach a witness[213] or to reject an application for citizenship.[214] Public offices which have been forfeited because of pardoned offenses might not be restored.[215] Generally, however, the rights to vote, hold public office, and serve on juries, and most other basic rights attached to United States citizenship, are restored by a full pardon or amnesty, or by a pardon or amnesty declaring such rights to be restored.[216] Obviously a pardon cannot prevent the operation of veiled social discrimination against the grantee such as ostracism or difficulty in obtaining employment.

B. Congress' Power to Enact Amnesties

The scope of Congress' pardoning power is less clear than the scope of the President's power, primarily because Congress has rarely exercised its power.[217] In 1893 Congress enacted an amnesty granting immunity

---

210. *See* Williston, *supra* note 204.

211. Knote v. United States, 95 U.S. 149, 153–54 (1877) (dictum).

212. *Id.* at 154. *Knote* should be distinguished from *Klein* and *Armstrong*, *supra* notes 183–84, where the property petitioners sought had not vested in a third party but was being held by the U.S. Treasury pursuant to statute. *See also* W. Humbert, *supra* note 168, at 79; Cozart, *The Benefits of Executive Clemency*, 32 Fed. Prob. no. 2, 33 (June, 1968).

213. Bennett v. State, 24 Tex. Ct. App. R. 73 (1877); *see* Maguire et al., Evidence 321 (1965), and cases cited therein.

214. *In re* Spenser, 22 F. Cas. 921 (No. 13,234) (C.C. Ore. 1878).

215. State v. Carson, 27 Ark. 469 (1872).

216. Cozart, *supra* note 212. Of course, partial or conditional pardons or amnesty may, by their very nature, operate to deny legal rights. *See, e.g., Ex Parte Wells*, *supra* note 194, where the Supreme Court affirmed the pardon of a convicted murderer conditioned upon submission to life imprisonment.

For a list of those civil rights which are lost by convictions of various crimes, *see* Federal Probation Officers Assoc., A Compilation of State and Federal Statutes Relating to Civil Rights of Persons Convicted of Crime (1960).

217. Congress has granted amnesty only four times, and each of these amnesties was limited in scope. Three were partial amnesties removing only civil or political disabilities. Act of May 22, 1872, ch. 193, 17 Stat. 142 (removing political disabilities imposed by the third section of the 14th Amendment to the Constitution); Act of May 13, 1884, ch. 46, 23 Stat. 21 (lifting certain disqualifications on grand and petit jurors); Act of June 6, 1893, ch. 389, 30 Stat. 432 (removing all political disabilities imposed by the third section of the 14th amendment). One was a full amnesty benefiting a small class of persons. Act of Feb. 11, 1893, ch. 83, 27 Stat. 443 (providing for immunity from prosecution for persons testifying before the ICC).

from prosecution to all witnesses testifying before the Interstate Commerce Commission.[218] In *Brown v. Walker*,[219] the Supreme Court held that this act did have the full effect of an amnesty, and that a subpoenaed witness could not therefore be excused from testifying on the ground that he might incriminate himself. The court stated that although the Constitution vests the pardoning power in the President, "this power has never been held to take from Congress the power to pass acts of general amnesty."[220] The reasoning behind this conclusion was not made clear by the Court, although the Court implied that the amnesty power, commonly exercised by the English Parliament, had been traditionally derived from the legislature's "sovereign power."[221]

Certain questions with respect to the congressional pardoning power remain unanswered by the Supreme Court. For example, it is not clear whether Congress has the power to grant pardons in addition to amnesties. The concepts of pardon and amnesty are often clearly distinguished by scholars who place the individual pardon power in the province of the President alone[222] by emphasizing the legislative character of an amnesty,[223] which takes away the consequence of a particular offense without regard to who the offenders are. The predominant view, how-

---

218. Act of Feb. 11, 1893, ch. 83, 27 Stat. 443.

219. 161 U.S. 591 (1896).

220. *Id.* at 601.

221. *Id.* Of course, Congress could not be said to have the same degree of "sovereign power" as the English Parliament, since in this country, unlike England, the legislature is subject to limitations imposed by the Constitution and the doctrine of separation of powers.

Whatever doubt might arise concerning Congress' power to grant an amnesty outright to draft evaders and deserters could probably be avoided if Congress were to make the amnesty ancillary to other Congressional legislation relevant to the change from wartime to peacetime. For Congress does have the power to abate prosecutions by means of legislation subsequent to the performance of unlawful acts. In *Hamm v. Rock Hill*, 379 U.S. 306 (1964), for example, the Supreme Court held that after the enactment of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2001a (1970), states could not prosecute participants in sit-ins even though the sit-ins preceded the enactment of the Civil Rights Act and were at the time unlawful under state law. Similarly, if Congress were to enact Congressman Koch's bills, notes 165 and 167 *supra*, broadening the scope of the conscientious objector (C.O.) status, it could presumably grant amnesty, or abatement from prosecution, for all draft evaders whose objection to the war would have placed them within the new C.O. status. And since it would be extremely difficult to separate this class of offenders from all others, Congress could grant amnesty to *all* draft evaders, as part of its enactment affecting the C.O. status.

222. *See, e.g.*, Radin, *Legislative Pardons: Another View*, 27 Calif. L. Rev. 387, 391 (1939); Barnett, *Executive, Legislature, and Judiciary in Pardon*, 49 Amer. L. Rev. 684, 693–698 (1915).

223. It has been suggested that the procedure Congress would follow in granting an amnesty would be similar to its procedure in repealing or modifying a law. W. Humbert, *supra* note 168. For example, if Congress granted amnesty to draft evaders after determining that it was no longer just or expedient to enforce the punishment provisions of the Selective Service Act (50 U.S.C. App. § 462 (1970)), then Congress would, in effect, be repealing or suspending retrospectively that portion of the Act.

ever, seems to be that Congress' pardoning power includes both amnesties and pardons,[224] since a distinction between the two has never been made in Anglo-Saxon law. Moreover, the Supreme Court has upheld, in *The Laura*,[225] the remission of a fine by the Secretary of the Treasury pursuant to Congressional authorization.[226] The Court ruled that the President's power to pardon offenses and remit penalties was not exclusive, and that Congress had frequently authorized subordinate officers to remit fines and penalties.[227] Since the remission of a fine is nearly equivalent to a pardon,[228] if Congress can delegate Government officials the power to remit fines, it seems to follow that Congress itself has the power to grant pardons.

Another question concerns the extent to which Congress can interfere with the President's exercise of his pardoning power.[229] The courts have held that Congress cannot restrict in any way the effects of a presidential pardon.[230] They have never said that if a President deliberates and decides against an amnesty, Congress may not enact one itself. It seems clear that both the President and Congress have certain pardoning powers; within the scope of their respective powers, each could expand on an amnesty granted by the other if it was deemed insufficient, but neither could limit the effects of the other's amnesty. The problems which might arise would probably be more political than constitutional.[231]

It should be noted, in conclusion, that from a practical point of view, the President is in a superior position to grant pardons and amnesties. He can command studies and assemble data more efficiently than Congress, and he can arrive at decisions quickly without making the sacrifices necessary in political bargaining.[232] Perhaps this is why Congress has enacted so few amnesties, while American presidents have granted numerous amnesties throughout this country's history.

---

224. *See, e.g.*, Weihofen, *Legislative Pardons*, 27 Calif. L. Rev. 371, 383 (1939).

225. 174 U.S. 411 (1885).

226. Act of Feb. 28, 1871, ch. 100, § 64, 16 Stat. 458.

227. 114 U.S. at 413–15. The Court noted that it had previously upheld a similar congressional authorization in United States v. Norris, 25 U.S. (10 Wheat.) 246 (1825).

228. A remission of a fine may not go so far as to "blot out" the offense and make the offender as innocent as if he had never committed the offense. *See* p. 118 *supra*. The offender is relieved of his duty to pay the fine, but presumably the original records of the offense remain. However, since even a full pardon falls short of making the offender "a new man", (*see* p. 118 *supra*), there would appear to be little practical difference between a pardon and the remission of a fine.

229. W. Humbert, *supra* note 168, at 44–45.

230. *See* p. 117 *supra*.

231. For example, the President might oppose congressional amnesty if he himself had deliberated and decided against such an amnesty. In this case, he might veto a congressional amnesty, but Congress might then override the President's veto. Of course, once a congressional amnesty became law, the President could not limit its scope.

232. W. Humbert, *supra* note 168, at 45.

C. Amnesties Granted by American Presidents

The executive amnesty power was exercised on several occasions during the early decades of this nation's history.[233] Between 1807 and 1830, five amnesties were granted to deserters from the armed services.[234] The condition most commonly attached to these amnesties was that a deserter turn himself in to a Commanding Officer within a certain time and fulfill the remainder of his term of duty.[235] Although two or three of these amnesties were proclaimed in order to raise troop levels for oncoming conflicts, it appears that at least two of the amnesties for deserters had forgiveness as their only motive.[236]

During the Civil War and Reconstruction extensive use was made of the President's amnesty power. On March 10, 1863, President Lincoln proclaimed amnesty and full restoration to rights and duties for all soldiers absent without leave from the Union forces, provided they returned to their respective units within 21 days.[237] Later that year the President granted the first broad amnesty benefitting Confederate rebels, his motive being to weaken the morale of the South and cause its soldiers to desert.[238] This amnesty[239] of December 8, 1863, extended to all persons who participated either directly or indirectly in the Confederate cause a restoration of all civil and property rights,[240] on the con-

233. President Washington first exercised the executive amnesty power in 1795 following the Whiskey Rebellion, a disorderly demonstration by Western Pennsylvania residents protesting the federal excise tax on whiskey. The President proclaimed an amnesty for all parties involved for their offense of treason on the condition that they give assurances of submission to the laws of the United States. 1 *Messages, supra* note 175, at 181. Five years later President Adams granted a similar amnesty to participants in a small Massachusetts insurrection. 1 *Messages* 303.

In 1807, President Jefferson proclaimed a full pardon for all deserters from the U.S. Army who had sought shelter outside the jurisdiction of the courts-martial. 1 *Messages* 425. The condition attached to this amnesty was that each deserter simply turn himself in to any Commanding Officer within four months and resume his military duties. Amnesties identical to Jefferson's were proclaimed by President Madison on Feb. 7, 1812, and Oct. 8, 1812, ostensibly to raise the troop levels to fight the British. 1 *Messages* 512, 514. A fourth amnesty of the same nature was proclaimed by President Madison on June 17, 1814. 1 *Messages* 543. Finally, an executive order of June 12, 1830, issued by John H. Eaton, President Jackson's Secretary of War, pardoned all deserters previously indicted or convicted and allowed them to return to duty, and discharged and pardoned all deserters at large provided that they would never again serve in the army. 2 *Messages* 449.

234. *See id.*

235. *Id.*

236. The amnesties of June 17, 1814, and June 12, 1830, would seem to have had no tactical significance, since at the time they were granted the nation was not preparing for war. *See id.*

237. 6 *Messages* 163.

238. J. Dorris, Pardon and Amnesty Under Lincoln and Johnson 28 (1953) [hereinafter cited as *Dorris*].

239. Proc. of Dec. 8, 1963, 13 Stat. 737.

240. Of course, property rights as to slaves, no longer recognized by the Union, were not restored.

dition that they take an oath to support the Constitution and the Union. Since the Union forces were definitely on the upswing militarily at that time,[241] tens of thousands of demoralized Confederates were easily enticed into taking the oath of allegiance to the Union.[242] Lincoln's amnesties thus extended not only to Union deserters but to citizens who had committed the treasonous act of enlisting in the ranks of the enemy.

Two proclamations of amnesty during the Civil War period are of particular interest as precedents for a possible amnesty in the near future. On March 11, 1865, when the Civil War was nearly over, President Lincoln granted amnesty to all Union deserters who would return to their posts within 60 days and serve the remainder of their military tours of duty plus a period of time equal to their unauthorized absence.[243] With the war almost ended, and with a generous period of time[244] in which to return to duty, it appears that this amnesty was proclaimed less for tactical reasons than for reasons of forgiveness and to avoid future divisiveness and dislocation of American citizens. Likewise, President Johnson's amnesty of May 29, 1865,[245] which was announced after the war had formally ended, evinced a desire to forgive the offense of treason and to bring Southerners back into a free and productive role within the Union. In his Proclamations of September 7, 1867 and July 4, 1868,[246] President Johnson extended amnesty to classes of persons excluded from previous amnesties.[247] On December 25, 1868, he proclaimed amnesty "unconditionally and without reservation, to all and to every person who directly or indirectly, participated in the late insurrection or rebellion, and a full pardon and amnesty for the offense of treason against the United States."[248] Among the 37 Confederate leaders finally pardoned by this extension of amnesty were Jefferson Davis and Generals Lee, Rooney, Custis, and Fitzhugh Lee.[249]

Draft evaders and deserters benefitted from no amnesties during or after World War I.[250] However, thirty persons convicted under the

241. Lincoln, *Third Annual Message to Congress, Dec. 8, 1863*, 6 *Messages* 188.

242. *Dorris* 62–63.

243. 6 *Messages* 278.

244. 21 days were allowed for return to duty in the Proc. of Mar. 10, 1963, *supra* note 237.

245. Proc. of May 29, 1865, 13 Stat. 758.

246. 15 Stat. 699 (1867) and 15 Stat. 792 (1868).

247. *See* Pres. Lincoln's Proc. of Dec. 8, 1863, *supra* note 239; Pres. Johnson's Proc. of May 29, 1865, *supra* note 245.

248. Proc. of Dec. 25, 1868, 15 Stat. 711.

249. *Dorris* 311.

250. After both World Wars, amnesty was extended to deserters with respect to the restoration of rights of citizenship. Proc. of Mar. 5, 1924, 43 Stat. Pt. II 1940; Proc. of Dec. 31, 1952, 17 Fed. Reg. 11833. However, these partial amnesties applied only to persons who had deserted after hostilities had ended and before Congress had declared the wars to be over. Since citizenship may be forfeited by desertion only during wartime,

Espionage Act[251] for obstruction of the draft received a commutation of their sentences to the time already served on December 15, 1923.[252] These pardons granted by the President were the culmination of almost two years of controversy which began before the House Judiciary Committee in March, 1922.[253] Since the issues of this draft-related dispute are arguably relevant to the issue of amnesty today, it is worthwhile to mention at least the resolution of the Espionage Act cases.

Several thousand persons were originally convicted and sentenced to prison[254] under the Espionage Act, which imposed a fine of $10,000 or imprisonment of up to 20 years for a wilful attempt to cause disloyalty within the armed services or obstruction of the draft.[255] During the postwar years most of these offenders had their sentences commuted on an individual basis to the time already served.[256] At the time of the congressional hearings, only 113 offenders remained in prison; well over half of these were serving sentences of five years or more, and 11 were serving the full 20 years.[257] The American Civil Liberties Union advanced two major arguments in behalf of these 113 offenders. First, none of the offenders had ever been an agent of the enemy, and their convictions were based not on violent acts but solely on acts involving speech and writing.[258] Second, the offenses were of a political, not criminal nature, and since the war and the need for enforcement of the Espionage Act had ended, these persons should be pardoned.[259] The hearings resulted in no congressional action. However, the President did appoint a commission to study all cases individually, and the recommendations of this commission were the basis of the President's pardons of December 15, 1923.[260]

Perhaps the most important precedent in this country's history for granting pardons or amnesty to deserters and draft evaders is the action which President Truman took with respect to draft violators shortly after the close of World War II. On December 25, 1946, he created by executive order[261] the three-man President's Amnesty Board[262] to ex-

---

8 U.S.C. § 1481(8) (1970), these amnesties gave peacetime deserters only what was already due them.

251. Act of June 15, 1917, ch. 30, 40 Stat. 217, *as amended* ch. 75, 40 Stat. 553.

252. 1924 Att'y Gen. Ann. Rep. 387. One of the released convicts was Eugene V. Debs.

253. *Hearings Before the House Comm. on the Judiciary*, 67th Cong., 2nd Sess. (1922) [hereinafter cited as *Espionage Act Hearings*]. *See also* 62 Cong. Rec. 277, 8352, 13178 (1919).

254. *Espionage Act Hearings* 2.

255. Act of June 15, 1917, ch. 30, § 3, 40 Stat. 217.

256. *Espionage Act Hearings* 2.

257. *Id.* at 5.

258. *Id.* at 2.

259. *Id.* at 9.

260. *See* note 252 *supra*.

261. Exec. Order 9814, 1946 Fed. Reg. 14645 (1946).

262. The members of the Board were the Hon. Owen J. Roberts, former Justice of the

amine the cases of all persons convicted of violating the Selective Training and Service Act of 1940.[263] The Board submitted its report within a year, and, as a result of its recommendations, the President granted full pardons to 1523 of the 15,805 offenders.[264]

The most striking aspect of the President's Amnesty Board was that while it was confronted with over 15,000 cases of selective service violations, it decided to consider each case individually. The question of granting a general amnesty was discussed by the Board at the outset, but they decided unanimously not to recommend an amnesty for two reasons. First, they realized that there were many flagrant criminals among the violators, persons whose draft violations stemmed from larger crimes.[265] Second, the Board decided that the presidential mandate to "examine and consider the cases of all persons convicted . . . ,"[266] gave rise to a strong inference that the President intended the cases to be dealt with individually.[267]

In dealing with the cases individually, the members of the Board had the assistance of 16 full-time attorneys[268] who compiled data concerning the family history, school and work records, criminal records, and selective service history of each offender. In considering this data the Board used no specific standards or formulae. They took all mitigating circumstances into consideration, such as ill health in the family, other family problems, illiteracy, or lack of understanding of obligations under the Selective Service Act.[269] Each offender under consideration had the opportunity to file a brief and appear at a hearing to state his case. Various organizations also testified at the hearings.[270]

United States Supreme Court; Mr. Willis Smith, former Pres. of the American Bar Assoc.; and Mr. James F. O'Neill, former Police Chief of Manchester, N.H.

Note the misnomer of "Amnesty Board," since the Board was asked to consider individual cases and recommend individual pardons. *See* text at note 266.

263. Ch. 720, 54 Stat. 885 (1940).

264. Proc. of Dec. 23, 1947, 62 Stat. 1441.

265. Arguably this should have had no bearing on the question of whether or not to grant a general amnesty, for those offenders simultaneously guilty of more serious crimes could still serve their sentences for these crimes. All that would be remitted by an amnesty for draft offenders would be the additional sentence resulting from the draft offense. Clearly, the Board thought that this class of draft offenders was morally less deserving.

266. 1946 Fed. Reg. 14645.

267. Interview with Mr. James F. O'Neill, Member of the President's Amnesty Board, July 27, 1971 [hereinafter cited as *Interview*, July 27, 1971].

268. Letter from Mr. W. Naramore, head of the staff of independent attorneys assisting the President's Amnesty Board, Aug. 12, 1971, on file at the Harvard International Law Journal. These attorneys received the cooperation of the Justice Department; they were paid at first by a White House emergency fund, later by the Justice Department.

It is interesting to note that, with respect to the amount of time which must have been spent on each case, the members of the President's Amnesty Board met only on weekends and holidays and provided their services on a voluntary basis. *Interview*, July 27, 1971.

269. *Interview*, July 27, 1971.

270. *Id.*

In some ways the President's Amnesty Board seemed to be little more than an appeals board, correcting the mistakes of prior court rulings and taking mitigating circumstances into consideration where the court failed to consider them.[271] However, a former Board member maintains that the Board went well beyond the role of an appeals board and recommended pardons for hundreds of men who, to his mind, had no "right," under the laws as they existed then, to be spared punishment.[272]

D. Factors Confronting Congress and the President in Their Decision on Amnesty

1. Practical Considerations Surrounding the Options Available to Congress and the President

It is clear that both Congress and the President have a number of options available to them for dealing with draft evaders and deserters. Each has the apparent authority to pardon any individual offender or class of offenders.[273] In addition, each can grant a partial pardon or amnesty, remitting only part of the punishment suffered for an offense. Likewise, each can attach conditions to any pardon or amnesty. Finally, it follows logically that different individuals or different classes of offenders can be dealt with in different ways, if there are compelling reasons to do so.

Before deciding on a given course of action with respect to draft evaders and deserters, Congress or the President would have to consider the practical problems and consequences of the various options open to them. Clearly the creation of a pardon board similar to President Truman's Amnesty Board would pose the greatest number of administrative difficulties. For whereas the Truman Board was dealing with 15,805 known persons within the United States who had all been convicted and about whom much data became available, today there are few records of the numbers, identity, and whereabouts of these exiles. Finding a way to make the exiles known to the pardon board, to compile a complete dossier on each individual, and to allow the exiles to submit to the "jurisdiction" of the pardon board without simulta-

---

271. The Board was criticized for not recommending pardons for a greater percentage of the draft offenders. In addition, it was criticized for arbitrariness, lack of standards, and discrimination against Jehovah's Witnesses and other self-proclaimed ministers or conscientious objectors. *See, e.g.*, Statement of the Rev. A. J. Muste, Chrm., Comm. for Amnesty, on the Pardons Granted by President Truman, Dec. 23, 1947 (1948).

The overall response to the Board's recommendations was, however, favorable. *Interview*, July 27, 1971.

272. *Interview*, July 27, 1971.

273. Congress' authority to grant pardons to named individuals has not been exercised or tested in the courts. *See* pp. 119-20 *supra*.

neously submitting themselves to prosecution for their offense[274] would involve an extremely complicated process. In addition, the lack of well-defined standards and the limited amount of time[275] given each case under the Truman Board suggest that the outcome in certain cases must have been highly arbitrary. Although clearer standards might be provided for a board operating today, the larger number of draft evaders makes it unlikely that such a board, regardless of the machinery made available to it, could have the time to reach a well-considered result in individual cases.

These administrative difficulties might be avoided with an amnesty, granted without regard to individual circumstances. However, an amnesty would give rise to other difficult questions. First, how would one define the class or classes of offenders entitled to receive amnesty? Should deserters be included in the same amnesty with draft evaders, and should deserters and draft evaders in exile be treated differently from their counterparts in jail? Second, are there means of further subdividing these broad classes of offenders for purposes of treating different groups in different ways? Individual motives and the degree to which one might be considered a conscientious objector might be meaningful factors in defining the scope of an amnesty. However, such factors cannot be used to limit the scope of an amnesty because by definition an amnesty takes no individual circumstances into account. It defines those to be pardoned according to the external aspects of the offense committed without regard to the identity or personal circumstances of the individuals involved.[276]

Further questions pertain to the conditions to be attached to an amnesty, and the means to be relied on for enforcing them. One suggestion would be to require draft evaders to submit to induction in the armed services, or to perform two or more years of some form of alternative service, as a condition to receiving the benefits of an amnesty.[277] Likewise, deserters might be required to return to their posts and to serve a period of time equal to the remainder of their term plus the length of their unauthorized absence, a condition attached to 19th-century am-

274. This last consideration is important in order to entice exiled deserters and draft evaders to take advantage of the pardon board.

275. Given that the Board met only on weekends and holidays, note 268 *supra*, and that 15,805 cases were considered over the course of about one year, the Board must have devoted to each individual case an average of less than five minutes.

276. An amnesty might take into account whether or not a self-declared conscientious objector took steps to become classified as a C.O., since this would be one of the "external aspects" of the particular offense by which an amnesty might define the class of offenders to be pardoned. However, such a factor would not be a meaningful means of limiting the scope of an amnesty.

277. This suggestion has been made by Mr. James F. O'Neill, member of the President's Amnesty Board of 1947. *Interview*, July 27, 1971. *Cf.* Senator Taft's amnesty bill, *supra* note 163.

nesties for deserters.[278] A variation of this plan might allow deserters to serve the required period of time in non-combat military service. All of the above conditions would have the advantage of being easily enforceable, since the agents of enforcement, the armed services for those who submit to induction or return to duty, and the draft boards for those who choose alternative service, are already in existence. In addition, the administration of an amnesty would be facilitated by attaching as a condition the requirement that exiles report to designated border posts or military bases within a given time period to benefit from the amnesty.[279]

2. Policy Considerations

The administrative details of an amnesty or even a pardon board could be resolved if Congress or the President decided to grant some form of amnesty or pardons. The more immediate question is whether Congress or the President will ever make this decision, and what policy considerations will influence them in their decision.

Policy considerations weighing against an amnesty or pardons include, first, the notion that law breakers ought not to be forgiven, particularly where their offense has, in one sense, imperiled the lives of those who took their places.[280] Second, an amnesty might cause a decline in morale and discipline within the armed services, thereby weakening military effectiveness.[281] Third, an amnesty might make it difficult to operate a military draft in the future, since future

278. *See* pp. 121–22 & note 233 *supra*.

279. This again was part of Mr. O'Neill's suggestion. *See* note 277 *supra*.

280. One could argue, of course, that because of their attitudes draft evaders and deserters would have made terrible soldiers and would have caused even greater risks at the battlefront.

281. It is unclear, however, to what extent an amnesty would cause a decline in morale and discipline, since morale and discipline are already at an extremely low ebb, largely because of anti-war sentiment within and without the armed services. *See* N. Y. Times, Sept. 5, 1971, at 1, col. 1; Oct. 26, 1970, at 1, col. 3; June 21, 1970, at 1, col. 5. The morale problem manifests itself not only in in-service anti-war sentiment (*see* note 285 *infra*), but in the high rate of desertion (*see* note 6 *supra*), the low rate of re-enlistments (*see* N. Y. Times, Dec. 11, 1970, at 93, col. 6), and the growing problem of drug addiction (*see* N. Y. Times, May 17, 1971, at 1, col. 1). As early as 1967, one man in 32 was absent without leave from the armed services at some time during the year. Testimony of A. Fitt, Ass't Sec. of Defense, *Hearings Before a Subcomm. on the Treatment of Deserters from the Military of the Senate Comm. on Armed Services*, 90th Cong., 2nd Sess. 3 (1968).

Given the tremendous amount of anti-war sentiment in the United States, and the fact that the President himself is trying to cut back our involvement in Indochina by pulling out troops (*see* note 285 *infra*), it is already clear to some servicemen in Indochina that they are being asked to endanger their lives for very little; there is little more harm that an amnesty could do to the morale of these servicemen. However, it cannot be denied that a significant number of servicemen do feel or would like to feel that they are making a positive contribution to a worthwhile cause; the morale of these men might well suffer if an amnesty were granted.

draftees would consider it inequitable to be required to serve in the armed forces when persons who had previously refused to serve had eventually been excused.[282] Finally, with respect to pardons or amnesty for deserters, objection might be raised to interference by Congress or by the President with military justice,[283] particularly after the recent controversy over the President's alleged intrusion into the Calley case.[284]

Policy considerations in favor of pardons or amnesty include, first, the desirability of bringing back to this country thousands of exiles whose presence abroad is a reminder to Americans and to the rest of the world that this country pursued in Indochina a course of conduct unacceptable to many of its young citizens. Second, the repudiation of the war by many American political and social leaders[285] has served to

---

282. It is interesting to note that President Truman's Amnesty Board never found this consideration to be compelling. *Interview*, July 27, 1971. Of course, the Board pardoned only 1523 offenders out of 15,805, and all of these 1523 had been convicted and had presumably served part or all of their sentence.

The difficulty of operating a military draft would be alleviated by making an amnesty conditional on submitting to induction into the armed services. (*See* pp. 126–27 *supra*). An all-volunteer army would also eliminate draft problems. President Nixon has set a goal of a volunteer army by 1973. *See* President Nixon's Message to Congress, Jan. 28, 1971, N. Y. Times, Jan. 29, 1971, at 1, col. 4.

In addition, it is arguable that most of those who refused to serve in Indochina for moral reasons would not refuse to serve in wars of less questionable justification, or in which the security of the nation was directly at stake.

283. The military establishment would, of course, have no legal cause for objecting, since the pardoning power of the President extends to offenses under the jurisdiction of the courts-martial, even apart from the President's powers as Commander-in-Chief. *See* Chapman, *Presidential Pardons*, 1957 J.A.G. J. 7 (May, 1957). Likewise, since the Uniform Code of Military Justice, which contains the provisions of law relating to the offense of desertion, was enacted by Congress, the congressional pardon power extends to offenses under the U.C.M.J. for the same reasons as it extends to offenses under other congressional enactments. *See* pp. 118–20 *supra*.

284. The President permitted Lt. Calley to remain in his apartment, contrary to the order of the court-martial which sentenced him to the stockade (*see* N. Y. Times, April 2, 1971, at 1, col. 8), and promised to "review" Lt. Calley's case after it had gone through the appeals process (*see* N. Y. Times, Apr. 4, 1971, at 1, col. 8).

285. Congressmen and Senators have spoken out against the war on countless occasions (*see, e.g.*, N. Y. Times, Apr. 23, 1971, at 6, col. 4) and have introduced a number of bills and resolutions accordingly. *See, e.g.*, Vietnam Disengagement Act of 1971, S. 376, 92nd Cong., 1st Sess. (1971); S.J. Res. 89, 92nd Cong., 1st Sess. (1971); H.R. Con. Res. 39, 92nd Cong., 1st Sess. (1971); H.R. Res. 54, 92nd Cong., 1st Sess. (1971). The President himself is pursuing a policy of troop withdrawal from Indochina. *See, e.g.*, N. Y. Times, Nov. 13, 1971, at 1, col. 8; Nov. 14, 1971 § IV, at 1, col. 4.

Within the armed services anti-war feeling has manifested itself in demonstrations, underground newspapers, and political meetings in coffeehouses. *See generally*, N. Y. Times, Sept. 2, 1969, at 1, col. 8; May 18, 1969, § VI, at 25; Apr. 6, 1969, at 2, col. 3. Even officers' groups have been formed to speak out against the war. *See, e.g.*, N. Y. Times, Oct. 23, 1970, at 22, col. 5; Sept. 27, 1970, at 19, col. 1. In 1969 the Army was forced to issue a memo, *Guidance on Dissent*, instructing commanding officers to impose only such minimum requirements as were necessary to enable the Army to perform its mission. N. Y. Times, Sept. 12, 1969, at 1, col. 8. In addition, more and more servicemen are seeking discharges or assignment to non-combat duties (*see* N. Y. Times, Mar. 22, 1971, at 25, col. 1), an option opened up by Department of Defense Directive 1300.6

accentuate the moral dilemma, more so than in past conflicts, of whether or not to serve in the armed forces; arguably deserters and draft evaders who acted in response to this dilemma are not the type of law breakers whom this country should seek to punish.[286] Third, a failure to grant pardons or amnesty might be considered inconsistent with the traditions of this country. Not only are there numerous precedents for amnesty in United States history, but the historic role of this nation is that of a free land to which exiles from other lands have frequently turned; it would be ironic for such a nation to bar its exiles from returning to a free and productive life within the United States. A fourth consideration would involve the diplomatic advantages which might inhere in an amnesty, since countries such as Canada and Sweden, to the extent that they are burdened by the presence of American exiles, would presumably welcome an amnesty. Finally, there are at present certain administrative policies in dealing with deserters and draft evaders[287]

(1962). *See* Cusick, *In-Service Conscientious Objection: Problems of the Growing Privilege*, 1970 J.A.G. J. 35 (Sept., 1970); N. Y. Times, May 2, 1971, at 14, col. 1; Apr. 13, 1971, at 16, col. 5; Mar. 31, 1971, at 18, col. 8; Aug. 30, 1970, at 35, col. 1.

A number of veterans of the conflict in Indochina have opposed the war. For example, the Vietnam Veterans Against the War received a great deal of publicity due to their "war crimes hearings" in Detroit (*see* The New Republic, Feb. 27, 1971, at 16), their demonstrations in Washington (*see* N. Y. Times, Apr. 25, 1971, § IV, at 1, col. 1), and their testimony before the Senate Foreign Relations Committee (*see* N. Y. Times, Apr. 13, 1971, at 1, col. 5; Barry, *Why Veterans March Against the War*, N. Y. Times, Apr. 23, 1971, at 31, col. 5).

286. Professor L. Boudin has reasoned that if we cannot, for practical reasons, hold the leaders of this nation responsible for the war crimes (*i.e.*, violations of international law) perpetrated in Indochina, then we should not hold deserters and draft evaders liable for their violations of our domestic laws. Statement of Leonard B. Boudin, Esq., Public Forum on "The Legal Responsibility of the Individual," sponsored by the American Society of International Law, Oct. 7, 1971, Washington, D. C.

One class of draft evaders abroad is especially deserving of some form of amnesty. This class consists of evaders who, prior to summer, 1970, refused to serve in the armed forces because of their objection to war in any form, but whose objection to war did not stem from traditional religious beliefs. In *Welsh v. United States*, 398 U.S. 333 (1970), the Supreme Court virtually eliminated the requirement that conscientious objection to war be based on religious training and beliefs. The Court ruled that moral and ethical beliefs, if held "with the strength of traditional religious conviction," could be the basis of the opposition to war. *Id.* at 339–40. *See* Note, *Conscientious Objectors: Recent Developments and a New Appraisal*, 70 Colum. L. Rev. 1426 (1970). If persons whose opposition to war stems from non-religious beliefs can now be classified as conscientious objectors (C.O.'s) and avoid military service, then persons with the same beliefs who were denied C.O. status before *Welsh* ought to be given first priority with respect to pardons or amnesty. Of course, whether or not these factors can be taken into account depends on whether amnesty is granted or a pardon board is created. It would probably be administratively infeasible for an amnesty to take moral beliefs into account. *See* p. 126 *supra*; *but cf.* Congressman Koch's recent bills, notes 165 & 167 *supra* (any person in military service, in jail, or in exile could return to full civilian status and seek exemption from military service as selective conscientious objectors).

287. For example, many deserters currently receive dishonorable administrative discharges. *See* p. 109 & note 133 *supra*. Although certain stigmas do attach to such a

which closely resemble partial or conditional amnesty, except for the haphazard way in which they are administered; an official amnesty (or pardon board) could at least apply more uniform standards to these offenders.

In weighing the considerations for and against pardons or amnesty, Congress or the President must also keep in mind the large number of options available to them for dealing with draft evaders and deserters. The appropriateness and the political acceptability of pardons or amnesty would depend largely on their scope, the conditions attached to them, and the time when they were granted. In this regard, the most politically and administratively feasible course of action, once a decision had been made in favor of some form of pardons or amnesty, would be to grant amnesty to all draft evaders on the condition that they submit to induction into the armed services or perform two years of alternative service, and to all deserters on the condition that they complete their tours of duty, plus a period of time equal to their unauthorized absence, in combat or non-combat military service.[288] As for the timeliness of pardons or amnesty, it would probably be most feasible politically to wait until American combat involvement in Indochina had ended.[289]

Perhaps the simplest and least controversial course of action which could be taken by Congress or the President, absent strong popular pressure for an amnesty,[290] would be to avoid the issue altogether and to keep it out of the public eye as much as possible. This appears to be the presidential policy to date.[291] However, it is clear that serious consideration should be given immediately to the factors for and against

---

discharge, the discharged serviceman does not face a jail sentence, and therefore the administrative discharge acts as a partial pardon.

Likewise, many draft evaders are excused from prosecution or from serving sentences after conviction if they submit to induction or to alternative service. *See* p. 111 and note 148 *supra*. A draft evader benefitting from this treatment is, in effect, receiving a conditional pardon.

288. *See* pp. 126–27 *supra*. It should be noted that conditions which may be thought desirable by the President or Congress may be unacceptable to deserters or draft evaders.

289. It is unlikely that many Americans would favor an amnesty while American servicemen were still dying in action in Indochina. However, it should not be necessary to wait any longer than the end of our combat involvement in Vietnam. Note that President Truman created his Amnesty Board a year after the hostilities had ended. *See* p. 123 *supra*. President Lincoln granted amnesty to deserters before the Civil War had even ended. *See* p. 122 *supra*. President Johnson's first amnesty came within two months of the end of the Civil War. *See id*.

290. Although much has been written on deserters and draft evaders abroad (*see* note 4 *supra*), and although more and more arguments concerning amnesty have been raised (*see* note 158 *supra*), the problems of draft evaders and deserters do not appear to be, and may never be, so immediate to the American electorate as to result in substantial political pressure for an amnesty.

291. *See* p. 88 *supra*.

pardons or amnesty and to the many options open to the President and Congress for dealing with deserters and draft evaders.[292]

E. Conclusion

The Constitution gives the President the power "to grant reprieves and pardons for offenses against the United States." This clause has been broadly interpreted by the courts to allow the President to grant full, partial or conditional pardons or amnesties for every federal offense, except in cases of impeachment.

Congress appears to have the same authority as the President, although its pardoning power is less certain because it has been exercised infrequently and tested little by the courts.

A number of options are open as to the type of amnesty or pardons which Congress or the President could grant to deserters and draft evaders. Amnesty might be granted to entire classes of offenders, or pardon boards might be created to consider cases individually. Pardons or amnesty could operate to remove any part of the punishment applicable to an offense, or they could remit the punishment altogether. Any condition can be attached to a pardon or amnesty, as long as it is lawful and possible to fulfill.

Presidents have in the past granted pardons or amnesty to deserters, draft evaders, and even persons guilty of treason. Whether or not similar pardons or amnesty will be granted in the near future depends ultimately on a political judgment, one which Congress or the President will soon have to make. At the very least, studies should be undertaken immediately to determine when and if an amnesty or a large number of pardons would be advisable and what form the amnesty or pardons should take. [D.L.R.]

---

292. Mr. James F. O'Neill, member of President Truman's Amnesty Board, has stated that he "would be hopeful that the Government would initiate something now so that a fair evaluation might be made of the situation, to take it out of the emotional area as much as possible. If this does not happen, some great injustices will be done." *Interview*, July 27, 1971. *See also* Senator George McGovern's campaign promise of amnesty, and various bills introduced in the House and Senate, p. 113 *supra*.

Congressional Amnesty for War Resisters: Policy Considerations and Constitutional Problems

*Louis Lusky**

I. Introduction

As the war in Southeast Asia grinds jerkily toward a halt,[1] we must turn to the task of binding our internal wounds. One of the knottiest problems we confront is whether amnesty should be granted to those who have resisted the war, or evaded participation in it, by illegal means. Public debate on amnesty for those who illegally have opposed American participation in the war has already started. The formulation of positions began more than a year ago when the American Civil Liberties Union recommended broad amnesty for draft violators, exiles, and military offenders.[2] A number of bills are in the congressional hopper;[3] the broadest—and, at this writing, the most recent—is H.R.

---

* Professor of Law, Columbia University School of Law; A.B. 1935, University of Louisville; LL.B. 1937, Columbia University. This article consolidates and expands 2 recent newspaper articles by Professor Lusky: *Amnesty: What Sort Will Bind our Wounds?*, Washington Post, Jan. 9, 1972, (*Outlook*) at 3, col. 1; and *Amnesty for Whom, and How Much?*, The Nat'l Observer, Mar. 11, 1972, at 18, col. 1. Permission of The Washington Post Co. and Dow Jones & Co., Inc., as copyright owners of the respective articles (©1972) to reprint substantial portions of those articles is gratefully acknowledged, as is the research assistance of John H. Roe, Jr., and Franklin M. Tatum of the Vanderbilt School of Law.

1. The winding down of the Indochina war has not proceeded smoothly. To some persons, in fact, the winding down process may seem illusory because in recent months bombing has been intensified as ground troops are removed from Southeast Asia. Moreover, on March 23, 1972, President Richard M. Nixon suspended the Paris peace talks and reinstituted them on April 27, 1972, only to suspend them again. N.Y. Times, Mar. 24, 1972, at 1, col. 1; N.Y. Times, Apr. 28, 1972, at 1, col. 8; N.Y. Times, May 5, 1972, at 1, col. 8. It should be noted, however, that these measures are not necessarily inconsistent with disengagement, especially since the imperatives of domestic politics appear to demand that the war be terminated or reduced to minimal proportions before the November 7 election.

2. Resolution of the American Civil Liberties Union, Jan. 18, 1971, New York, New York; Sobol, *Amnesty Legislators: Evading the Issue*, Village Voice, Feb. 24, 1972, at 1, col. 1.

3. *E.g.*, H.R. 14175, 92d Cong., 2d Sess. (1972) (introduced by Congresswoman Abzug, providing for a general, unconditional amnesty for persons who have committed specified violations of federal law and establishing a commission to consider granting amnesty to persons who have violated state or federal law while protesting the war in Southeast Asia); H.R. 12822, 92d Cong., 2d Sess. (1972) (introduced by Congressman Edward Koch, providing amnesty to state and federal offenders at times and under conditions established by the President); H.R. 12417, 92d Cong., 2d Sess. (1972) (introduced by Congressman Edward Koch, providing amnesty to persons

14175, introduced by Congresswoman Bella S. Abzug on March 29, 1972.[4]

The protean term "amnesty" is not mentioned in the Constitution, but it has been used elsewhere in many different senses: clemency for convicted criminals, clemency for offenders not yet apprehended or prosecuted, and immunity from punishment for acts not yet committed that ordinarily would be criminal.[5] The term has been employed whether the offenders were listed by name or specified by general classification, and it has sometimes been used as a synonym for the constitutional term "pardon."[6] On occasion the substance of amnesty has been granted without use of the term at all.[7] In this article, the term "amnesty" is

---

who have refused or evaded service in the armed forces if such persons serve 2 years in specified public service organizations); S. 3011, 92d Cong., 1st Sess. (1971) (introduced by Senator Taft, providing amnesty to persons who have refused or evaded service in the armed forces if such persons serve 3 years in specified public service organizations); H.R. 5690, 92d Cong., 1st Sess. (1971) (introduced by Congressman Edward Koch, defining conscientious objector to include a person who objects to a particular war).

4. The Abzug bill provides for a general unconditional amnesty on the cessation of hostilities, but no later than July 1, 1972, to be granted automatically to anyone who has refused or evaded induction under the draft laws, to anyone who absented himself from the armed forces, and to violators of associated statutes, when such violations occurred or will occur during the war years. *See, e.g.*, Military Selective Service Act § 12, 50 U.S.C. 462 (1970); Uniform Code of Military Justice, 10 U.S.C. §§ 882, 885-88 (1970); Act of June 25, 1948, 18 U.S.C. § 1381 (1970); Act of June 25, 1948, 18 U.S.C. § 2387 (1970). In addition, H.R. 14175 proposes the establishment of an Amnesty Commission appointed by the Congress and the President to grant amnesty to violators of any other federal, state, or local law when the Commission finds that the violation was motivated substantially by opposition to the war and that it did not result in significant property damage or personal injury. The bill gives the Commission leeway further to grant amnesty when it finds that although the violation did result in damage it was nevertheless justifiable on the basis of a deeply held ethical or moral belief. H.R. 14175, 92d Cong., 2d Sess. (1972).

5. Amnesty has been defined as "an act of the legal sovereign conceding, from grace, a voluntary extinction from memory of certain crimes committed against the state." 1 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 36 (1937). Amnesty, according to that authority, usually is granted to political offenders, often before trial or punishment. Amnesties may be said to be "first, general or particular, that is, they may cover all classes of political offenders or may be limited to special groups, with specific exceptions; and second, absolute or conditional, that is, they may impose no conditions or they may demand the performance of certain conditions before their provisions enter into legal effect." *Id.* at 36-39. *See* Duscha, *Amnesty?*, SATURDAY REV. 51 (May 6, 1972). *See also* Comment, *American Deserters and Draft Evaders: Exile, Punishment or Amnesty?*, 13 HARV. INT'L L.J. 88 (1972).

6. Brown v. Walker, 161 U.S. 591, 601 (1896). "The distinction between amnesty and pardon is of no practical importance . . . . 'The Constitution does not use the word "amnesty," and, except that the term is generally applied where pardon is extended to whole classes or communities, instead of individuals, the distinction between them is one rather of philological interest than of legal importance.' " *Id.*

7. For example, near the end of the Second World War, Secretary of War Patterson created a top-level War Department Clemency Board to eliminate excessive sentences that had been adjudged under the stress of combat. Royall, *Revision of the Military Justice Process As Proposed by the War Department*, 33 VA. L. REV. 269, 279 (1947). At the same time, art. 50½ of the Articles

used in its broadest sense: the softening of punishment for a large number of offenders, for reasons of public policy.

From our earliest days government has granted amnesty after divisive conflicts at home or abroad. From the Shays[8] and Whiskey[9] Rebellions in the eighteenth century, through the Civil War,[10] down through

---

of War of the 1920 Code, providing automatic, high-level review in certain types of cases, was activated. *Id.* at 280; *see* Act of June 4, 1920, ch. 227, § 1, 41 Stat. 797 (repealed and replaced by the UCMJ in 1948).

8. In June 1787, the Massachusetts General Court repealed the Disqualifying Act, which had imposed certain civil disabilitites on the rebels, and (except for 9 rebel leaders) proclaimed unconditional pardon for all who would take an oath of allegiance by September 15, 1787. R. TAYLOR, WESTERN MASSACHUSETTS IN THE REVOLUTION 165 (1954). Eventually even Daniel Shays received a formal pardon. Hampshire Gazette, Sept. 19, 1787.

9. By pardoning participants in the 1795 Whiskey Rebellion, President Washington set a precedent for a succession of presidential amnesties. On July 10, 1795, Washington proclaimed "A full, free and entire pardon to all persons . . . of all treasons . . . and other indictable offenses against the United States committed within the fourth survey of Pennsylvania before the said 22nd day of August last past . . . ." 1 COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 173 (J. Richardson ed. 1897) [hereinafter cited as J. Richardson]. Exceptions were made of those who "refused or neglected to give assurance of submission to laws of the United States; violated such assurances after they were given; or willfully obstructed or attempted to obstruct the execution of the acts for raising a revenue on distilled spirits and stills, or by aiding or abetting therein . . . ." *Id.* In his explanation to Congress, the President said: "[M]y personal feeling is to mingle in the operations of the Government every degree of moderation and tenderness which the national justice, dignity and safety may permit." Swomby, *Amnesty: The Record and the Need*, NAT'L CATHOLIC REP. 2 (Jan. 1, 1969).

Other amnesties were granted before the Civil War. In 1799 a band of over 100 Pennsylvanians, rebelling against the laws for the valuation of lands and dwellings, freed the prisoners of a United States marshal and prevented him from carrying out his duties. On May 21, 1800, President Adams granted a full, free, and absolute pardon to all these persons. J. Richardson, *supra* at 276-77.

By the Proclamation of October 15, 1807, President Jefferson granted a full pardon to all deserters from the Army of the United States who would surrender themselves within a period of 4 months. *Id.* at 413. During the War of 1812, proclamations offering "a full pardon" to deserters who surrendered within 4 months were issued by President Madison on February 7, 1812, October 8, 1812, and June 17, 1814. No exceptions were listed. *Id.* at 497, 499, 528. President Madison also proclaimed an amnesty for the pirates and smugglers in the vicinity of New Orleans who had helped fight the British. 10 DICTIONARY OF AMERICAN BIOGRAPHY 540 (1933).

The last of the pre-Civil War amnesties came in 1830 when President Jackson approved a War Department General Order that extended a free and full pardon to deserters, subject to the following provisions: those in confinement were to be released and returned to duty; those at large and under sentence of death were to be discharged and never again enlisted in the service of the country. J. Richardson, *supra* at 1062-63.

10. During the Civil War President Lincoln granted several amnesties. By presidential proclamation on March 10, 1863, deserters from the Union Army who reported on or before April 1, 1863, were restored to their regiments without punishment except for forfeiture of pay and allowances during their absence. Proclamation of Mar. 10, 1863, 13 Stat. 775. On December 8, 1863, a general amnesty was extended to rebels if they took an oath of loyalty to the United States. The pardon included full restoration of property rights except property rights in slaves and when rights of third parties had intervened. Proclamation of Dec. 8, 1863, 13 Stat. 737. Officers of the Confederate Government, certain other classes of rebels, and former officers of the United States who

World War I[11] and World War II,[12] the ending of hostilities usually has been followed by amnesty in one form or another. President Nixon, in a January 2, 1972, television interview, said—though with a later qualification[13]—that "we always, under our system, provide amnesty. You remember Abraham Lincoln in the last year—the last days, as a matter of fact—of the Civil War, just before his death, decided to give amnesty to anyone who had deserted, if he would come back and rejoin his unit and serve out his period of time." President Nixon added that he "would be very liberal with regard to amnesty."[14]

---

joined the rebellion were excepted. On March 26, 1864, Lincoln found it necessary to issue an additional proclamation defining the cases in which insurgent enemies were entitled to the benefits of the Proclamation of December 8, 1863. Proclamation of Mar. 26, 1864, 13 Stat. 741. Finally, on December 25, 1868, President Andrew Johnson granted a full, unconditional pardon and amnesty to "all persons engaged in the late rebellion." Proclamation of Dec. 25, 1868, 15 Stat. 711. President Johnson's unqualified amnesty followed a series of limited, conditional amnesties. *See generally* 5 J. Richardson, *supra* note 9, at 3906.

11. Two presidential proclamations were issued regarding the grant of amnesty following World War I. The first, issued by President Coolidge on March 5, 1924, granted amnesty to those persons convicted of desertion in time of war who had deserted between the signing of the Armistice in November 1918, and the formal termination of the war by actions of the President and Congress in November 1921. Proclamation of Mar. 5, 1924, 43 Stat. 1940. The second proclamation was issued by President Franklin D. Roosevelt on December 23, 1933, and covered persons convicted of various wartime crimes who had complied with the sentence imposed on them. Proclamation of Dec. 23, 1933, 48 Stat. 1725.

12. President Truman on December 23, 1946, created a 3-man President's Amnesty Board to decide on a case-by-case basis whether amnesty should be granted to persons accused of violating the Selective Training and Service Act of 1940, ch. 720, 54 Stat. 885 (1940). Proclamation of Dec. 23, 1947, 62 Stat. 1441. Out of 15,805 cases reviewed, clemency was granted in 1,523 pursuant to recommendations by the Board; President Truman had already pardoned another 1,518, making a total of 3,041. Knight, *The Amnesty Question for Draft Evaders: Are They All the Same?*, The American Legion Magazine 4 (May, 1972). Following the Korean War there was no general amnesty, but some administrative leniency was demonstrated. North Korea held 4,428 American soldiers as prisoners of war, many of whom allegedly had collaborated with the enemy. By September 6, 1953, all of the POW's who desired to return were repatriated, and the army released its official policy on prosecuting those soldiers who had collaborated with the enemy. The Department of the Army stated that it would prosecute only when there appeared to be the most compelling and convincing evidence that the accused was guilty of a serious offense, and that no returned prisoner eligible for discharge should be retained for the purpose of trial in the absence of that kind of evidence. Prugh, *Justice for all Recap-K's*, The Army Combat Forces J., 15, 16 (Nov. 1955). *See also* Note, *Misconduct in the Prison Camp: A Survey of the Law and an Analysis of the Korean Cases*, 56 Colum. L. Rev. 709 (1956). In 1959, the remaining 210 prosecutions were dropped. E. Kinkead, In Every War But One 75 (1959).

13. *See* note 30 *infra*.

14. N.Y. Times, Jan. 3, 1972, at 20, col. 8. The American Legion's position is that amnesty should be granted, after the conflict ends, on a case-by-case basis as was done after World War II, see note 12 *supra*, but not on a blanket basis. Knight, *supra* note 12, at 37.

II. Policy Considerations

It seems fair to say that the question is not whether there is to be amnesty or no amnesty. Rather, the questions are: *to whom* should amnesty be granted, and *how much*, and *when*, and *how*? Nevertheless, to start at the heart of the matter, let us consider a question that is asked whenever amnesty for war resisters is debated: "Why should we forgive these traitors and cowards, pardon their crimes, and welcome them back from Canada and Sweden? "There are myriad variations on this theme; sometimes the bluntness is softened, sometimes the rightness or wrongness of the war is acknowledged to be relevant, and sometimes distinctions are recognized between those who have fled and those who have submitted to punishment. But the core of the question is constant. It always starts with "why," and it always is premised on the following assumptions:

(1) That those who have broken the law to show their opposition to the war in Southeast Asia are "traitors"—meaning "disloyal" rather than actually guilty of treason as defined by article III, section 3 of the United States Constitution.

(2) That those who have broken or evaded the law in order to avoid service in the war are also cowards.

(3) That the society can well do without these people if they choose to leave or stay away, and can afford to relegate them to the status of fugitives, convicts, or ex-convicts if they elect to return or remain.

(4) That the only real problem is how to be fair to these law violators and their families, and that the remaining 200,000,000 or so of us have nothing to worry about except the general ethical responsibility to let the punishment fit the crime.

(5) That there is no longer any bond of common citizenship between the law violators and the great law-abiding majority who have made the laws and have at least acquiesced in the war.

Believing that each of these assumptions is fallacious, I shall try to show that the dominant concern for amnesty is a concern for the welfare of society as a whole, and that preoccupation with the problem of fairness to the violators involves a sad distraction from the main point. I shall mention also a few undisputed facts which, in my opinion, cast serious doubt upon the accuracy of the first three of the five listed assumptions—facts which suggest that amnesty may be called for even if we disregard the needs of the larger society and seek nothing but fairness to the law violators. In the concluding section of the article, I shall very briefly describe the legal tools that are available to do what-

ever the American people ultimately say they want done—as they may say at the polls this November.

First let us examine the root question, the starting point for appraisal of any proposal for public action: whose ox is being gored? The fourth and fifth of the five propositions both say, in different ways, that fairness to the lawbreakers is our only concern. Although it is by no means unimportant, I submit that it should not be even our primary concern. Rather, our primary concern should be to thrust this long and divisive war into history as completely and rapidly as we can, to let time get on with its healing, to cleanse our society of a continuing legal fallout whose half-life is measurable in decades, and—without denying ourselves the honor of mourning the dead, supporting the crippled, and comforting the bereaved—to turn our minds and hearts to the future.

Dirty and frightful as the war experience has been, lessons can be learned from it that may help us deal with future challenges in a manner more humane, more effective, and less expensive. The war has demonstrated that a society such as ours, in which the people have the ultimate power of decision (however long it may take them to bring their power to bear through the electoral process),[15] will tear itself apart if led into a war whose necessity cannot be made clear to all or nearly all of the people. Moreover, the war has done much to liberate us from the fiction, so carefully nurtured by Senator Joseph McCarthy and his latter-day disciples, that communism is a unitary, monolithic phenomenon comparable to a killing disease which we are honor bound to fight wherever we find it, and which we can effectively handle with the same remedies wherever and whenever it shows itself. The war also has helped to dispel the dangerous dogmas (a) that our nation—militarily encumbered, as it is, by its dependence on consent and its humanitarian ideals—can lick anyone we elect to fight, and (b) that a "white" nation can lick a "nonwhite" nation in any fair and equal combat. Finally, the war has reminded us, as we have not been reminded since the Great Depression, that our liberties are too fragile to survive when any substantial minority loses confidence in the Government's desire for justice; therefore, our society can remain open only if the ethical qualities of our Government's major undertakings command the support, or at least the acquiescence, of nearly everyone.

All these lessons, and others too, will serve us well when we grapple with the problems of today and tomorrow, if only we can allow ourselves to learn. But our ability to understand and profit from the dearly bought

---

15. See p. 534 *infra*.

experience is, and will continue to be, gravely impaired so long as the legal debris of the war in Southeast Asia remains to distract us, so long as our eyes are blinded by the ashes of dead issues.

What is this legal debris? Let us suppose that tomorrow morning the fighting ends and all war prisoners are sent home.[16] What, then, will our situation be? At that time we shall have terminated the war in its international aspect only. On the domestic side, these quite substantial vestiges will remain, and, barring amnesty, they will remain for years and decades to come:

(1) Tens of thousands of objectors to the war have broken the federal and/or state criminal law and, if not already prosecuted, are subject to prosecution. Numerically, the largest groups are draft refusers or evaders, and participants in illegal demonstrations. The great majority have engaged in no act that has involved or threatened injury to any person, or substantial damage to, or theft of any property; but some few have committed assault, arson, burglary, and perhaps worse crimes.

(2) Some of these people have exiled themselves in Canada, Sweden, and other foreign countries. Others, who have not fled, either (a) have been convicted, or (b) are presently being prosecuted or serving prison sentences, or (c) are subject to prosecution.[17] The last group is by far the largest. The war's end may lead most prosecutors to ignore them in favor of more dangerous offenders. Even so, however, each of them, along with his spouse and close associates, will know that if anything is said, published, or done that awakens the prosecutor's unfavorable attention, prosecution may ensue at any time before the applicable statute of limitations has run.[18] The violator, in effect, will be a probationer and as such he will have reason to keep his mouth shut on controversial issues. His one venture in political expression—opposition

---

16. It is a good bet that the war will in fact end, or practically end, no more than a few weeks before the November election. Prisoner repatriation may take a while longer, but it is most unlikely to be long delayed, once the fighting ends. The alternatives to ending the war would seem to be (1) a sudden movement in the direction of World War III or (2) renunciation by President Nixon of his chances for re-election.

17. *See* NEWSWEEK, Jan. 17, 1972, at 19, col. 1; Village Voice, Feb. 24, 1972, at 1, col. 1.

18. *E.g.*, Act of Aug. 10, 1956, 10 U.S.C. § 843 (1970), provides that a person charged with desertion or absence without leave in time of war may be tried and punished at any time without limitation. A person charged with desertion in time of peace is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications. In addition, any person who refuses or evades registration or service in the armed forces in violation of § 3 of the Universal Military Training and Service Act, 50 U.S.C. (App.) § 453 (1970), is subject to a 5-year statute of limitations. Toussie v. United States, 397 U.S. 112 (1970); Act of Sept. 1, 1954, 18 U.S.C. § 3282 (1970).

to the war by illegal means—may prove to be his last.

(3) Almost without exception, these violators believe—perhaps rightly, perhaps not—that they have served rather than harmed the United States by revealing, through their law-breaking or self-exile, the depth of their own conviction that the war has been wrong, thereby helping to speed the general realization that the war must be ended. Millions of others share and cling passionately to this conviction,[19] and will go on proclaiming the injustice of continued punishment, prosecution, or de facto probation. Thus the divisive effect of the war will be prolonged, perhaps for decades.

(4) The rankle will persist long after prosecutions are ended and sentences served. The stigma of criminal status—the plight of the ex-convict—will still remain. This status carries with it various political and civil disabilities, heavier in some states than in others. These include disability to vote,[20] to hold public office,[21] and to obtain public employment;[22] ineligibility for admission to professions such as law, medicine, and teaching, or for admission to other licensed callings such as taxi driving and liquor retailing;[23] and other less obvious legal impediments.[24]

(5) The law violators are numerous enough, and are sufficiently dispersed geographically, to spread these effects throughout the land. The problem is thus a national one, arising from a national war and involving our national political health, and it can only be dealt with effectively and uniformly through federal action.

Notice should be taken not only of the foregoing considerations but also of two additional arguments against soft treatment for those who have defied the law in the name of a higher duty. These less frequently articulated arguments, which very probably underlie the superficial question posed at the beginning of this discussion, have been raised by thoughtful scholars and statesmen and therefore deserve attention.

First, it is asked how we can expect any future military conscription

---

19. Blau, *Amnesty for Dissenters on War Is Backed by Religious Leaders*, N.Y. Times, Mar. 28, 1972, at 16, col. 3.

20. "The state constitutional and statutory provisions disfranchising persons convicted of criminal offenses are so diverse that they are difficult to categorize. Despite this diversity, the result in the overwhelming majority of states is that citizens convicted of serious crimes, usually felonies, lose their right to vote until their civil rights are restored in accordance with the appropriate state laws." Special Project, *The Collateral Consequences of a Criminal Conviction*, 23 VAND. L. REV. 929, 975 (1970).

21. *Id.* at 987.

22. *Id.* at 1013.

23. *Id.* at 1002-13.

24. *See id., passim.*

31-658 O - 74 - 10

to succeed if we now grant unconditional and complete pardon to those who have defied the draft for the war in Southeast Asia. The answer, I think, is to be found in a point already mentioned. This war has demonstrated not that the American people are outright pacifists, but that we draw the line at wars whose necessity cannot be made clear to all or nearly all of the people. The experience with the present war provides no basis for believing that our young people would lag back if our borders were invaded or if some neo-Hitler were to engage in atrocities, aggressions, and threats of world domination similar to those that led to World War II.

The second and broader question is whether civil disobedience in *any* form is not to be feared and deplored as an attack upon the rule of law itself. Can public order survive if we do not insist upon at least some punishment for those who have denied their obligation to comply with duly enacted laws, channeling their opposition to effect change into the regular corrective processes of opinion formation and electoral action? The general answer to this question is to be found in our system's long standing recognition that civil disobedience can serve a useful public function. For centuries, religious leaders have insisted that although Caesar must be rendered his due, the individual rightly reserves to himself the right and duty to decide *what belongs* to Caesar. If he decides that Caesar has transgressed a higher law, he is duty-bound to resist. Moreover, although it is not to be expected that Caesar will immediately countenance such resistance in all cases—as Caesar does in the case of our law respecting conscientious objection to military service—civil disobedience still serves a useful function by appealing to what the late Chief Justice Stone called "the sober second thought of the community."[25] If history proves that the objectors were right, as in the case of John Brown's murderous attack at Harper's Ferry and in the more recent example of the thousands who engaged in illegal "sit-ins" to protest racial discrimination, their crimes will be viewed as having brought about long-run gains outweighing any temporary losses in respect for legal authority. The risk they run is that their crimes may be found to disserve the long-term needs of society, contrary to their own deeply felt convictions and hopes. Such has been the fate of those who, like certain governors and lesser officials of the deep South,[26] defied the Supreme Court's determination that racial segregation is unconstitutional. Whether formally convicted or not, their sincerely motivated

25. Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 25 (1936).

26. Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 COLUM. L. REV. 1163, 1174 n.49 (1963); *see* United States v. Barnett, 376 U.S. 681 (1964).

violations of the criminal law will not be redeemed by the judgment of history. In the case of resisters to the present war, history promises a more generous appraisal.

A more specific answer, pertinent in the particular circumstances of the present war, will serve to introduce a discussion of the nature and scope of amnesty that the public interest demands for resisters to this war. Two accepted axioms of constitutional government are (1) that the rule of law binds the rulers as well as the ruled and (2) that ultimate sovereignty resides in the electorate. If Caesar himself has ignored the expressed will of the people, is it the resisters who bear the real blame for denigration of the law, or is it Caesar?

A strong case can be made for the proposition that Americans passed adverse judgment on the war no later than the 1968 presidential election. President Lyndon B. Johnson won the 1964 election on a platform containing a no-war plank. Four years later, in my opinion, a clear mandate was given when both major candidates won nomination on an end-the-war program, after President Johnson had declined to run for the stated reason that he feared his candidacy would hamper his peacemaking efforts. This November the people will have another opportunity to express their condemnation of the war if the issue is adequately framed in the presidential and congressional races. Should the people reaffirm what I think they said in 1968, it logically follows that those who opposed the war sooner and more vigorously than the rest of us will tend to be regarded as having performed a service by helping to hasten public awareness of the war's true character and presumptively should be relieved of all legal disadvantages resulting from their opposition to the war, or at least any such disadvantage that they incurred after the 1968 election. This conclusion not only involves remission of criminal penalties but also implies the complete erasure of criminal status.

It is desirable that amnesty, if premised on the wrongness of the war, be granted openly and officially and not bit by bit in the form of quiet military discharges given to deserters, or through case-by-case leniency accorded by clemency commissions or parole boards.[27] The candid admission of error is beneficial not only to the individual soul, as the churchmen tell us, but also to the body politic. The French, for example, benefited from their painful recognition of the wrong done to Captain Dreyfus. The Germans benefited from their even more painful recognition of Nazi wickedness under the rule of Adolf Hitler. We Americans, if we truly believe that the war in Southeast Asia has been

27. This, for example, was the practice adopted after World War II. *See* note 12 *supra*.

a bad mistake, also would benefit, both in self-esteem and in our relations with the rest of the world, by making express and official acknowledgment of the error, and by doing so sooner rather than later.

Full amnesty might not, however, be thought appropriate in all cases. It would not be illogical, though it would be administratively difficult, to limit clemency to those whose offenses were motivated wholly or partly by conscientious opposition to the war. To be sure, such a limitation would discriminate in favor of articulate young men who are capable of explaining their feelings in religio-philosophical lingo; and relatively few of them come from Appalachia or Harlem. It also would not be illogical, though again administratively difficult, to deny full clemency to those whose offenses have been "violent."[28] Even with these limitations, however, most acts of criminal opposition to the war would be pardoned.

If, on the other hand, it turns out that most Americans can agree only that fairness should be accorded to war resisters, so that their acts or omissions will be reappraised in the calmer atmosphere of peacetime, amnesty will be narrower. There may be liberation of prisoners, but no erasure of the stigma of conviction or restoration of political and civil rights. There may be amnesty for federal offenders (most of whom are draft refusers) but not for state law violators—most of whom have been prosecuted for some form of violence or near-violence, though the great majority have done no more than block the transport of draftees or engage in other illegal demonstrations.

In appraising the desirability of limitations upon amnesty, however, one somber fact must not be ignored. Attica stands as a reminder of the difficulty and human waste involved in punishment of people who believe they have been unjustly convicted. It also has brought to light the primitive crudity of the methods that our penologists have thus far devised for dealing with them. The execution or continuing punishment of persons whose innocence is maintained not only by themselves but by great numbers of sympathizers provides the latter with a devastatingly effective means of perpetuating destructive social discord. This is not to say that the guilty and the incorrigible should go free whenever noisy mobs persist in demanding their release. But it is clear that when a considerable segment of society believes that a real question exists about moral or legal culpability of the incarcerated—as is true in the case both of the black militants at Attica and of the draft resisters

28. The term "violent" is not easy to define. Does it include, for example, the act of scrambling draft board records or participating in sit-in demonstrations?

imprisoned now or in the future by reason of their disapproval of the war in Southeast Asia—there is a price to be paid in the coin of persisting social discord.

Finally, in deciding whether clemency is due such offenders as the Berrigans, we should ask ourselves this question: had John Brown's body *not* lain a-mouldering in the grave when the Civil War ended—if, instead, he had been serving a prison term—would he have been accorded less generosity than Jefferson Davis and Robert E. Lee?

Only a crystal ball could tell us how the amnesty problem will be resolved. Its timing, especially, may depend on how the war ends. Should it cease at a defined moment,[29] amnesty is likely to be granted soon thereafter. Should the war trail off as gradually as it began, amnesty may be slower in coming.

But should we postpone our consideration of the problem until hostilities are over? I do recognize the accuracy of President Nixon's prediction that amnesty will be delayed until our prisoners are back home and American servicemen, except perhaps for volunteers, no longer fight in Southeast Asia.[30] It does not follow, however, that the political groundwork for an amnesty must be delayed until then. It is not too soon to initiate public debate on the scope and timing of the amnesty. Unless public opinion crystallizes and the candidates commit themselves on this issue, the November 1972 election cannot serve as a meaningful expression of the popular will. Nor is it too soon to lay the necessary *legal* groundwork. Thus in the remainder of this article, I shall consider the possibilities for presidential and congressional action to develop the means for carrying out the expression of public sentiment that may well emerge when Americans next go to the polls.

III. Presidential and Congressional Power To Grant Amnesty to Federal and State Offenders

The constitutional authority for a presidential or congressional grant of amnesty must be examined on two levels. Since the Constitution contains an express provision regarding clemency for federal offenses, presidential and congressional power in this area is considered first. The question of amnesty for state offenders is then discussed separately

29. Recent events may have increased the probability for a rapid termination of the war in Southeast Asia. A quick settlement may be spurred by President Nixon's trips to Peking and Moscow, by congressional action, or by the United Nations, whose competency in this area has been increased by the admission of Mainland China. *Cf.* N.Y. Times, Apr. 14, 1972, at 1, col. 4.

30. N.Y. Times, Jan. 3, 1972, at 20, col. 8; Newsweek, Jan. 17, 1972, at 19, col. 2.

because the Constitution contains no express provision regarding clemency for these persons.

A. Federal Offenders

It is true, as President Nixon has reminded us, that clemency for federal offenses is an executive function. Article II, section 2 of the Constitution gives pardoning power to the President.[31] Such clemency can take the form of full pardon—with erasure of guilt, as is done in cases of mistaken identity—or remission or reduction of punishment. Moreover, the President's power to grant amnesties as well as individual pardons was not seriously challenged until congressional radicals mounted a constitutional attack against President Andrew Johnson's unconditional grant of amnesty on Christmas Day, 1868, to all Confederates who had participated in the Civil War.[32] In 1869 the Senate Judiciary Committee concluded that the President under article II, section 2 of the Constitution did not have the power to grant amnesty. The Committee reasoned that there is a distinction between the terms pardon and amnesty and that the framers, being aware of the distinction, deliberately omitted amnesty from the authority "to grant Reprieves and Pardons."[33]

The presidential power to grant amnesties under article II, section 2 was confirmed, however, by the Supreme Court's decisions in *United States v. Klein*[34] and *Armstrong v. United States*,[35] that upheld the amnesty order of December 25, 1868. In later decisions, the Court has gone on to hold that the President's pardoning power includes the power to grant not only outright amnesty, but also amnesty conditioned on the

---

31. U.S. CONST. art. II, § 2. The section gives the President "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."

32. Proclamation of Dec. 25, 1868, 15 Stat. 711.

33. "The committee, after a careful examination of the subject, have no hesitation in coming to the conclusion that the proclamation in question was wholly beyond the constitutional power of the President, and that it can have no efficacy to the ends sought to be reached by it." S. REP. No. 239, 40th Cong., 3d Sess. 22 (1869). The logic of the Senate report apparently ignores a statement by Alexander Hamilton in *Federalist Paper No. 74*, in which he indicated that the pardoning power should extend to the granting of an amnesty. The principal argument for reposing the power of pardoning in the Chief Executive, he said, is that "in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth . . . . The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity." THE FEDERALIST No. 74, at 484 (E. Earle ed. 1937) (A. Hamilton).

34. 80 U.S. (13 Wall.) 128 (1872).

35. 80 U.S. (13 Wall.) 154 (1872).

occurrence or nonoccurrence of a specified event.[36] Reasonable conditions—perhaps an oath of allegiance, as after the Civil War[37] or perhaps alternative public service as proposed by Senator Taft and others[38]—can be attached.

Although the President has plenary power to grant clemency to federal offenders, both military and civilian, there are certain things that he lacks power to do without congressional authorization. He probably lacks power to restore the citizenship of those who have relinquished it in protest against the war, since Congress alone possesses the naturalization power.[39] Moreover, the Supreme Court in *United States v. Burdick*[40] held that the President cannot give a pardon granting a general personal immunity from punishment for unspecified offenses. Although there is some language in the opinion that could be cited against presidential power to grant pre-conviction pardons, this should be disregarded as unconsidered dictum both because the exercise of this power has been upheld by the Court on a number of occasions[41] and because the case involved a wholly different problem.[42]

The Supreme Court never has been called upon to adjudicate the constitutionality of an amnesty granted by Congress alone, without the affirmative concurrence of the President or some member of his cabinet. As a matter of fact, so far as I can discover, Congress has never passed an act labeled as an amnesty. Legislation having the same effect, however, has been passed on several occasions. After the Civil War, for example, Congress, pursuant to section three of the fourteenth amendment,[43] removed political disabilities[44] that had been imposed

---

36. United States v. Burdick, 236 U.S. 79 (1915); Knote v. United States, 95 U.S. 149, 153 (1877); *see* United States v. Klein, 80 U.S. (13 Wall.) 128 (1872).

37. *See* note 10 *supra* and accompanying text.

38. H.R. 12417, 92d Cong., 2d Sess. (1972); S. 3011, 92d Cong., 1st Sess. (1971).

39. The Constitution expressly delegates to Congress the power "To establish an uniform Rule of Naturalization . . . ." U.S. CONST. art. I, § 8, cl. 4.

40. 236 U.S. 79 (1915).

41. Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1872); United States v. Klein, 80 U.S. (13 Wall.) 128 (1872). *See also* notes 9 & 10 *supra* (presidential preconviction amnesty for *specified* offenses had repeatedly been granted, apparently without challenge).

42. The decision turned on whether acceptance of a pardon is necessary for its effectiveness. 236 U.S. at 87.

43. Section 3 of the fourteenth amendment provides: "No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability." U.S. CONST. amend. XIV, § 3. The first sentence legitimized Congress' attempts

This action was never challenged in the courts, because it was expressly authorized by the fourteenth amendment,[45] and, therefore does not constitute persuasive authority for the existence of a general congressional amnesty power. On the other hand, at least two Supreme Court cases[46] have indicated that Congress may have an amnesty power, although it is clear that Congress may not limit or restrict the presidential pardoning power.[47]

In *Pollock v. Bridgeport*,[48] commonly referred to as *The Laura*, the Court upheld an act of Congress granting the Secretary of the Treasury the authority to remit fines for violation of federal revenue laws. It was contended that this constituted an encroachment upon the President's exclusive right to grant pardons,[49] but the Court held otherwise, noting that remission of fines had been standard practice for nearly a century. It will be observed that, in this case, the remission of fines could not have taken place without the concurrence of a high executive official. For that reason it does not squarely hold that Congress could independently grant amnesty, although it does provide some support for that view.

The same is true of *Brown v. Walker*,[50] decided in 1896. The plaintiff, Brown, had been subpoenaed to testify before a federal grand jury investigating alleged violations of the Interstate Commerce Act. He asserted the fifth amendment privilege against self-incrimination in refusing to answer certain questions, even though Congress previously had authorized immunity for witnesses such as he, and immunity had been granted to him. Having been jailed for disobeying a court order to answer the questions, Brown petitioned for a writ of habeas corpus on the theory that despite immunity, compulsion to answer was an unconstitutional infringement upon his privilege against self-incrimination.

---

to refuse to seat members-elect who had southern sympathies. *See generally* R. CURRENT, T. WILLIAMS, & F. FREIDEL, AMERICAN HISTORY 433-35 (1963).

44. Congress exercised the right to remove the disabilities imposed by § 3 of the fourteenth amendment at various times and usually to benefit limited classes of persons. In 1872, for example, by a blanket act, disabilities were removed from all persons except Senators and Representatives of the 36th and 37th Congress, officers of the judiciary, military and naval service of the United States, and a few others. Act of May 22, 1872, 17 Stat. 142. Finally, on June 6, 1893, Congress removed all of the disabilities that had been imposed under § 3 of the fourteenth amendment. Act of June 6, 1893, 30 Stat. 432.

45. U.S. CONST. amend. XIV, § 3.

46. Brown v. Walker, 161 U.S. 591 (1896); Pollock v. Bridgeport, 114 U.S. 411 (1885).

47. *Ex parte* Garland, 71 U.S. 333 (1866).

48. 114 U.S. 411 (1885).

49. *Id.* at 413.

50. 161 U.S. 591 (1896).

The Supreme Court rejected Brown's fifth amendment claim[51] and addressed the separation of powers argument, the possible conflict between the immunity statute and the executive pardoning power:

> The act of Congress in question securing to witnesses immunity from prosecution is virtually an act of general amnesty, and belongs to a class of legislation which is not uncommon either in England . . . or in this country. Although the Constitution vests in the President "power to grant reprieves and pardons for offences against the United States, except in cases of impeachment," this power has never been held to take from Congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction, although, as was said by this court in *Ex Parte Garland* . . . "it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."[52]

As already noted, the issue in *Brown v. Walker* was whether the legislature has power to forbid prosecution of a lawbreaker in exchange for otherwise unavailable testimony against other lawbreakers.[53] The case of the war resisters is not quite parallel, because no *quid pro quo* is involved.[54] Nevertheless, the above-quoted language seems to recognize the amnesty power as one that belongs to Congress despite the absence of express constitutional delegation, because the Court says that the President's clemency power does not "*take from Congress* the power to pass acts of general amnesty."

B. State Offenders

The President surely lacks power to grant amnesty to the many violators of state law—a category that includes most of the illegal demonstrators—because his constitutional pardoning power is expressly confined to federal offenses. Moreover, the Constitution does not indicate whether Congress has any power in this area. Consequently, some constitutional lawyers may say that state law violators cannot be granted clemency even by Congress and the President acting in concert. They may argue that this power resides only in the respective states.

Each of the 50 state governments does possess this power. In most of them, the governor has authority under the state constitution to

---

51. *Id.* at 600.

52. *Id.* at 601.

53. *See* text accompanying notes 51 & 52 *supra*.

54. It is true that Senator Taft's bill, S. 3011, paralleled in the House by H.R. 12417, introduced by Congressman Edward I. Koch, would grant amnesty on condition that the violator work in some public service job for a stipulated period. Unlike the immunity statute involved in *Brown v. Walker*, however, the objective of the Taft-Koch bill is not to obtain the years of public service as a stipulated consideration; the purpose, rather, is to avoid discrimination against those who responded to the draft as required by law.

extend clemency to those who have been convicted,[55] and in the remaining states this authority resides in either a board of pardons[56] or the legislature.[57] Moreover, although only a minority of state constitutions contain a clemency provision whose scope is not expressly limited to post-conviction pardons,[58] it may well be that each state legislature has the power to withdraw the authority of police and prosecutors to proceed against lawbreakers not yet convicted.

Reliance on state clemency for war resisters, however, would inevitably negate the possibility of national uniformity, since there would be a broad spectrum of clemency policies. Illegal demonstrators, for example, convicted of obstructing the entrance to draft offices by linking arms to form a cordon, might be granted a full pardon in some states, reduction or remission of sentence in others, and no relief at all in the remainder. Such diversity, of course, would leave much to be desired on the score of fair and equal treatment for those who have responded in identical fashion to the challenge presented by the foreign policies and military ventures of the same federal government. Furthermore, the national interest in healing the societal wounds that the war has inflicted

---

55. ALAS. CONST. art. III, § 21; ARIZ. CONST. art. 5, § 5; ARK. CONST. art. 6, § 18; CAL. CONST. art. 7, § 1; COLO. CONST. art. IV, § 7; CONN. CONST. art. IV, § 13; DEL. CONST. art. 7, § 1 (on recommendation in writing of majority of board); HAWAII CONST. art. IV, § 5; ILL. CONST. art. 5, § 13; IND. CONST. art. 5, § 17 (may be limited by board appointed by legislature); IOWA CONST. art. 4, § 16; KAN. CONST. art. 1, § 7; KY. CONST. § 77; LA. CONST. art. 5, § 10 (on recommendation in writing of majority of board); ME. CONST. art. VII, § 9 (in conjunction with council); MD. CONST. art. II, § 20; MASS. CONST. art. VIII, § 64 (with advice of council); MINN. CONST. art. 5, § 4 (in conjunction with board); MICH. CONST. art. VI, § 9; MISS. CONST. art. 5, § 124; MONT. CONST. art. VII, § 9 (governor's action must be approved by board); MO. CONST. art. 4, § 7; N.H. CONST. art. 2, § 52 (governor may grant with advice of council); N.J. CONST. art. 5, § 1; N.M. CONST. art. 5, § 6; N.Y. CONST. art. IV, § 4; N.C. CONST. art III, § 6; N.D. CONST. art. III, § 76 (1900) (in conjunction with board); OHIO CONST. art. III, § 1; OKLA. CONST. art. 6, § 10 (upon favorable recommendation of pardons and parole board); ORE. CONST. art. V, § 14; PA. CONST. art. 4, § 9 (on recommendation in writing of majority of board); R.I. CONST. amend. 2 (governor may grant with advice and consent of Senate); S.D. CONST. art. IV, § 5; TENN. CONST. art. III, § 6; TEX. CONST. ART. 4, § 11 (governor may grant on written recommendation and advice of board majority); VA. CONST. art. V, § 73 (power taken away if legislature creates pardons board); VT. CONST. art. 2, § 20; WASH. CONST. art. 3, § 9; W. VA. CONST. art. 7, § 11; WIS. CONST. art. 5, § 6; WYO. CONST. art. 4, § 5.

56. FLA. CONST. art. 4, § 12; GA. CONST. art. V, § 1, ch. 21-3011; IDAHO CONST. art. 4, § 7; NEB. CONST. art. 4, § 13; NEV. CONST. art. V, § 14; S.C. CONST. art. 4, § 11; UTAH CONST. art. VII, § 12.

57. ALA. CONST. art. 5, § 124.

58. ALA. CONST. amend. XXXVIII; CONN. CONST. art. IV, § 13; DEL. CONST. art. 7, § 1; HAWAII CONST. art. IV, § 5; IDAHO CONST. art. 4, § 7; KAN. CONST. art. 1, § 7; KY. CONST. § 77; LA. CONST. art. 5, § 10; ME. CONST. art. V, § 11; MD. CONST. art. II, § 20; N.J. CONST. art. 5, § 2, ¶ 1; ORE. CONST. art. V, § 14; PA. CONST. art. 4, § 9; R.I. CONST. amend. 2; S.C. CONST. art. 4, § 11; TEX. CONST. art. 4, § 11; VT. CONST. art. 2, § 20; WASH. CONST. art. 3, § 9.

would be lost in a welter of parochial party politics. Thus it would seem that federal action is needed, and since the President lacks the power to pardon state law violators, this raises the question whether any provision in the Constitution delegates sufficient power to Congress to grant amnesty to state offenders.

Despite the tremendous reach accorded to the commerce power during the past 35 years,[59] it would be hard to construct an argument that it extends to the pardoning of all state law violators; even if an argument to this effect were somehow contrived, it would rightly be subject to criticism as a subterfuge.[60] For example, it is difficult to explain how the pardoning of one convicted of criminal trespass for conducting a sit-in at a university ROTC office can be viewed as a protection of "Commerce with foreign Nations, [or] among the several states, [or] with the Indian Tribes."[61]

The war power provides a more solid basis for granting amnesty to state law violators. It has been held to authorize Congress to deal with the economic consequences of foreign wars.[62] By parity of reasoning, the war power should be held to include the authority to deal with war's *social* consequences—specifically, disrespect for law on a scale not seen since Prohibition days, and a devastating polarization of political opinion. Given these facts, congressional amnesty for state offenders might well pass muster under the war power.[63]

It does not follow, however, that primary reliance *should* be placed on the war power.[64] There is a certain incongruity in using the war power

---

59. Since 1937, the Supreme Court has accorded virtually complete deference to congressional exercise of the power. *See, e.g.*, Daniel v. Paul, 395 U.S. 298 (1969); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Wickard v. Filburn, 317 U.S. 111 (1942); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937). In the 100 years preceding 1937, the commerce clause was interpreted more strictly. *See, e.g.*, Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935); Railroad Retirement Bd. v. Alton R.R., 295 U.S. 330 (1935); Hammer v. Dagenhart, 247 U.S. 251 (1918); United States v. E.C. Knight Co., 156 U.S. 1 (1895); The Trade-Mark Cases, 100 U.S. 82 (1879); *cf.* United States v. Butler, 297 U.S. 1 (1936).

60. Reliance on the commerce power to support the Civil Rights Act of 1964, 42 U.S.C. §§ 1971, 1975a-d, 2000a to h-6 (1970), occasioned much adverse comment on this account. *See, e.g.*, Katzenbach v. McClung, 379 U.S. 294, 305 (1964) (Douglas & Goldberg, J.J., concurring).

61. U.S. CONST. art. I, § 8, cl. 3.

62. Bowles v. Willingham, 321 U.S. 503 (1944) (rents); Yakus v. United States, 321 U.S. 414 (1944) (prices).

63. In addition, the Supreme Court has held that congressional power to mitigate the consequences of a war does not end with the termination of hostilities, so timing of the amnesty would seem to be no problem. Woods v. Miller Co., 333 U.S. 138 (1948) (postwar rent-control).

64. The fact that Congress has not declared this war might be thought to preclude reliance on the war power, but such an objection almost certainly would fail. *See* Mora v. McNamara, 389 U.S. 934 (1967) (the Court refused to review denial of injunction sought by army privates who attacked legality of undeclared Vietnam war and resultant orders shipping them to Vietnam).

to pardon those who have illegally *resisted* the war, and this might make an amnesty inexplicable to the electorate if based upon the war power alone. In my opinion, congressional action can and should be predicated not only upon the war power but also—and more appropriately—upon a constitutional provision that was adopted for the very purpose of empowering Congress to override state action that is inconsistent with federal policy: the privileges or immunities clause of the fourteenth amendment.

Some constitutional lawyers may well lift an eyebrow at this suggestion. They know that the clause was emasculated almost a century ago by the decision in the *Slaughter-House Cases*,[65] and that a 1935 judicial effort to reactivate it as a self-executing limitation on state power[66] was quashed five years later.[67] They know too that it was a watershed decision which has shaped the whole course of federal-state relations during the past 99 years. Even during the past ten years, when we have seen constitutional precedents that limited equality, free expression, and the rights of accused persons repudiated wholesale, this 1873 decision has stood firm as Gibraltar, virtually untouched by recent criticism.[68]

Yet, in my opinion, the decision in the *Slaughter-House Cases* was a disaster—a product of well-motivated judicial arrogance, comparable in destructive effect to the three "self-inflicted wounds" listed by Charles Evans Hughes in his Blumenthal Lectures at Columbia University in 1927:[69] the *Dred Scott* case,[70] *Hepburn v. Griswold*,[71] and *Pollock v. Farmers' Loan & Trust Co.*[72] As in each of those cases, the Court in the *Slaughter-House Cases* overstepped the bounds of judicial power to rewrite the Constitution. As in each of those cases, the Court was impelled to usurpation by a felt need to save the Nation—from rebellion in *Dred Scott*, from fiscal irresponsibility in *Hepburn*, from socialism in *Pollock*, and from replacement of federalism by centralized government in the *Slaughter-House Cases*. And, as in each of those cases, the

---

65. 83 U.S. (16 Wall.) 36 (1873).

66. Colgate v. Harvey, 296 U.S. 404 (1935); *see* Hague v. CIO, 307 U.S. 496, 500 (1939) (Roberts & Black, J.J., concurring).

67. Madden v. Kentucky, 309 U.S. 83 (1940).

68. The most notable exception is L. MILLER, THE PETITIONERS ch. 7 (1966).

69. C.E. HUGHES, THE SUPREME COURT OF THE UNITED STATES 50-54 (1928).

70. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857), *overruled* by U.S. CONST. Amend. XIV.

71. 75 U.S. (8 Wall.) 603 (1870) (the first Legal Tender Case), *overruled*, Knox v. Lee, 79 U.S. (12 Wall.) 457 (1871).

72. 157 U.S. 429 (1895) (invalidating the federal income tax), *overruled*, U.S. CONST. amend. XVI.

well-intentioned decision was a national catastrophe.

These are serious charges to level at a constitutional decision that has been so universally accepted by great judges.[73] Therefore, although this is not the place for a full disquisition, it is necessary to state the gravamen of the indictment.[74]

First, we must understand precisely what Justice Miller's majority opinion held. In 1869 the Louisiana legislature had enacted a statute giving to a certain corporation a monopoly on the operation of slaughter houses in three parishes, including New Orleans. A number of butchers, being thus forbidden to continue their businesses as independent enterprises, attacked the statute as violative of the thirteenth and fourteenth amendments. The Supreme Court rejected these contentions, affirming the judgment of the Supreme Court of Louisiana that upheld the statute.

What concerns us here, with regard to the amnesty question, is the *rationale* of Justice Miller's opinion, insofar as it interprets the privileges or immunities clause of the fourteenth amendment. Section 1 of the amendment, after providing that all persons born or naturalized in the United States and subject to its jurisdiction are its citizens, goes on to provide: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."[75] The complaining butchers claimed that the right to pursue a lawful common calling is a privilege inherent in citizenship, and that, being citizens of the United States, they enjoyed immunity from abridgment of that

---

73. Hague v. CIO, 307 U.S. 496, 519-20 & n.1 (1939) (Stone, J., concurring); Colgate v. Harvey, 296 U.S. 404, 443, 445-46 (1935) (Stone, Brandeis, & Cardozo, J.J., dissenting).

74. It could be contended that even if the *Slaughter-House Cases* were not overruled, Congress, under the privileges or immunities clause and § 5 of the fourteenth amendment, has the power to grant amnesty to persons who have violated state statutes in their acts of protest against the war in Southeast Asia. Although § 5 historically has been restrictively construed (*see* the Civil Rights Cases, 109 U.S. 3 (1883); United States v. Harris, 106 U.S. 629 (1882); United States v. Cruikshank, 92 U.S. 542 (1875)), recent decisions seem to indicate that the Supreme Court is willing to give Congress some latitude in defining the phrases of the first section of the fourteenth amendment. *See* Katzenbach v. Morgan, 384 U.S. 641 (1966). *See also* United States v. Guest, 383 U.S. 745 (1966). It would seem that under the Civil Rights Act of 1866, as interpreted by Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), Congress has the power under the analogous § 2 of the thirteenth amendment to grant to an individual an affirmative privilege against private racial discrimination. Since the fourteenth amendment was designed in part to legitimate the Civil Rights Act of 1866, it is arguable that the fourteenth amendment's privileges or immunities clause was intended to have wider scope than has heretofore been recognized. If the fourteenth amendment was designed to give to Congress the power to define a privilege against private racial discrimination, then the fourteenth amendment also might confer on Congress the power to grant amnesty as an immunity of United States citizenship and to forbid even private discrimination against an individual because of his dissent from the war in Southeast Asia. To the contrary it could be argued that the fourteenth amendment granted to Congress expansive power only to prevent racial discrimination. *See* Oregon v. Mitchell, 400 U.S. 112, 129 (1970).

75. U.S. CONST. amend. XIV, § 1.

privilege. Their case was the first that required the Supreme Court to interpret and apply the fourteenth amendment, and, as one commentator aptly wrote 40 years afterward: "Thus the Supreme Court of the United States began its series of adjudications under the Fourteenth Amendment by substantially repudiating it."[76]

Justice Miller's reasoning rejecting the plaintiffs' claim under the privileges or immunities clause of the fourteenth amendment was founded on seven propositions, of which the second, third, sixth and seventh, it is submitted, do violence to the Constitution:

(1) Federal citizenship is a status distinct from state citizenship, as the very wording of the first sentence of the fourteenth amendment shows.

(2) Each type of citizenship, federal and state, carries with it a distinct set of privileges and immunities *and the two sets do not overlap;* thus whatever is a privilege or immunity of state citizenship cannot be a privilege or immunity of federal citizenship.

(3) It is state and not federal citizenship that carries with it "those privileges and immunities which are *fundamental;* which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign."[77]

(4) The privilege of pursuing a common calling is a privilege of *state* citizenship because it is a fundamental right that had existed, subject to the regulatory power of the several statutes, since before the ratification of the Constitution in 1789—*i.e.*, from the time when the colonies became free states.

(5) The second sentence of the amendment protects only the privileges and immunities of federal citizenship.

(6) Therefore, the right to pursue a common calling is not a privilege of federal citizenship and so is not protected by the privileges or immunities clause of the fourteenth amendment.

(7) It follows that the privileges or immunities clause of the fourteenth amendment is very restricted in its scope: it protects only those privileges and immunities that "owe their existence to the Federal gov-

---

76. E. Abbott, Justice and the Modern Law 75 (1913).

77. 83 U.S. (16 Wall.) at 76, quoting with approval from Justice Washington's opinion in Corfield v. Coryell, 6 F. Cas. 546 (C.C. E.D. Pa. 1823) (emphasis as in original). The *Corfield* case, interpreting the privileges and immunities clause of art. IV, § 2, held that the privilege of digging for oysters in New Jersey waters was not a privilege or immunity of citizenship which had to be extended to Pennsylvanians, because enjoyment of the state's public domain was not so "fundamental" a right as to be a privilege inherent in citizenship.

ernment, its National character, its Constitution, or its laws,"[78] such as the right to go to the seat of government, the right of access to seaports, the right to petition the federal government for redress of grievances, the right to freedom of the high seas and protection while in foreign lands, and the right to use navigable streams. The great residue of rights—including nearly all of those that really matter to the common man—are privileges and immunities of state citizenship only, the fourteenth amendment not having been intended to alter the basic character of our federal system by "bring[ing] within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States."[79]

The notion that there could be no overlap between the perquisites of state and of federal citizenship was made from the whole cloth, a sheer invention by Justice Miller. Certainly the idea was not implicit in Justice Washington's *Corfield v. Coryell*[80] opinion, which interpreted the privileges and immunities clause of article IV, section 2, because that 1823 case was decided long before the fourteenth amendment imported into the Constitution, for the first time, the term "citizen of the United States." To be sure, the duality of citizenship had been expounded by Chief Justice Taney in the *Dred Scott* case[81] but *not* for the purpose of showing that the perquisities appurtenant to the respective citizenships were mutually exclusive; his point, rather, was that one might be a "citizen" within the meaning of the Missouri Constitution and laws, and yet not be a "citizen" as that term is used in article III, section 2,[82] and article IV, section 2,[83] of the *federal* constitution. Furthermore, as Justice Miller himself recognized, it was universally agreed that the purpose of the first sentence of the fourteenth amendment was to repudiate the *Dred Scott* ruling that Negroes, whether slave or free, were not and could not become members of the "political community

---

78. 83 U.S. (16 Wall.) at 79.

79. 83 U.S. (16 Wall.) at 77.

80. 6 F. Cas. 546 (C.C. E.D. Pa. 1823).

81. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

82. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies . . . between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. CONST. art. III, § 2.

83. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. CONST. art. IV, § 2.

created by the Constitution of the United States"—*i.e.*, "citizens of the United States."[84]

A full exploration of the catastrophic results that have flowed from the Miller interpretation of the fourteenth amendment privileges or immunities clause must be reserved for another occasion. For present purposes it is enough to point out that it limited almost to zero the power of *Congress*, under the three Civil War amendments, to intervene in the relations of a state with its citizens in order to prevent a national interest from being subverted as a result of hostility or indifference on the part of state and local officials. It is true that, as Justice Miller pointed out, a drastic shift of power from the states to the federal government would have resulted from a decision that the privileges and immunities of federal citizenship include the "fundamental" rights; he seems to have assumed—quite understandably, and indeed correctly—that the *legislature* has power to define and redefine the perquisites of citizenship. As he said, this power would have enabled Congress to assume centralized control of the whole country, if—and it is an important "if"—the voters had been willing to stand for it.[85] Granting *arguendo* that the possibility of such centralization at the date of the *Slaughter-House* decision was as dangerous as Justice Miller believed, there would have been compensating advantages. Had the Court confirmed the privileges or immunities clause as a source of plenary congressional power to root out the vestiges of slavery, we might now, a century later, be much farther on the road to a nonracial society.[86] Since the fourteenth amendment—though begotten by the need to protect the newly freed slaves from the erstwhile rebel state governments—is by no means limited to protection of the freedmen, the only thing that prevents resort to its privileges or immunities clause as a source of congressional *amnesty power* is the restrictive *Slaughter-House* interpretation of that

---

84. 60 U.S. (19 How.) at 406.

85. *See* Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543 (1954).

86. Of course, the Court in the *Slaughter-House Cases* conceded that Congress possessed the power, provided by the final section of each of the amendments, to enforce the 3 Civil War amendments by appropriate legislation. But the Court initially construed these enforcement clauses with almost unbelievable strictness. *See* note 74 *supra*. Not until a few years ago did the Court begin to permit congressional use of the enforcement clauses to broaden the self-executing coverage of the amendments—though the Court stopped short of making them into a general charter to preempt state jurisdiction whenever Congress believes the national interest so demands. *See* Griffin v. Breckenridge, 403 U.S. 88 (1971); Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968); Cardona v. Power, 384 U.S. 672 (1966); Katzenbach v. Morgan, 384 U.S. 641 (1966); United States v. Price, 383 U.S. 787 (1966); United States v. Guest, 383 U.S. 745 (1966).

clause. Therefore, let us examine the soundness of that interpretation.

Although Justice Miller's interpretation is supported neither by precedent nor by the words of the Constitution, this might not be a ground for criticism if, in the judgment of history, it had served the public welfare. Other such usurpations, perhaps including *Marbury v. Madison*[87] itself, have survived that test. For reasons already stated, however, I think it has seriously *disserved* the public welfare by allocating to the Court rather than to Congress the primary responsibility and authority for rooting out the vestiges of slavery. Other unhappy consequences could be cited as well. But let us assume that the Court was justified, in the short view at least, in recoiling from an interpretation that would have aggrandized the power of a Congress, which, for corruption and faction, has been unexcelled by any of its forebears or successors. There is still the matter of intellectual honesty.

Incredible as it may seem, Justice Miller's opinion (1) deliberately misquotes the Constitution in a material respect; (2) trims a quotation from *Corfield v. Coryell* in a manner which obscures the fact that, from his viewpoint, it was harmful rather than helpful authority; and (3) denies, erroneously, that Congress had ever undertaken to define the privileges and immunities of federal citizenship. Let us examine these points in order.

(1) At page 75 of 16 Wallace, Justice Miller declared: "In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision [defining "privileges and immunitites" of state citizenship] is found in section two of the fourth article, in the following words: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens *of* the several States.' "[88] This purported quotation, which substitutes the word "of" for "in," is set forth as part of the argument for dual citizenship and against the dissenting view that the framers of the fourteenth amendment, who had regarded certain fundamental privileges and immunities as implicit in the status of free citizen *simpliciter*, intended to add federal protection to those same fundamental privileges and immunities already accorded protection by the several states. It would be reasonable to assume that Justice Miller's pen had merely slipped in this purported quotation from article IV, section 2, until one discovered that the error remained uncorrected despite the following observation in Justice Bradley's dissent: "It is pertinent to observe that both the clause of the Constitution referred to, and Justice Washington in his comment on it,

87. 5 U.S. (1 Cranch) 137 (1803).
88. 83 U.S. (16 Wall.) at 75 (emphasis added).

speak of the privileges and immunities of citizens *in* a State; not of citizens *of* a State. It is the privileges and immunities of citizens, that is, of citizens as such, that are to be accorded to citizens of other States when they are found in any State; or, as Justice Washington says, 'privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments.' "[89]

(2) At page 76 of 16 Wallace, Justice Miller quotes from Justice Washington's opinion in *Corfield v. Coryell:*

> The inquiry is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are *fundamental;* which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.[90]

This quotation appears to be consistent with Justice Miller's conception that state rather than federal citizenship carries with it the fundamental rights that antedated the Constitution. In his dissent, however, Justice Bradley blasts this notion by the simple process of continuing the enumeration of fundamental privileges and immunities from the *Corfield* opinion at the point where Justice Miller stopped: "*the right of a citizen of one State to pass through, or to reside in, any other State* for purposes of trade, agriculture, professional pursuits, or otherwise . . . ."[91] This right certainly owed its existence to the federal constitution rather than to state citizenship; the Court had so held only five years before in *Crandall v. Nevada.*[92] Indeed, Justice Miller brazenly cited and quoted from that very case in another connection.[93]

(3) At page 72 of 16 Wallace, Justice Miller asserted: "The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress."[94] This is a remarkable assertion, be-

89. *Id.* at 117-18.
90. *Id.* at 76.
91. *Id.* at 117 (emphasis added).
92. 73 U.S. (6 Wall.) 315 (1867) (majority opinion by Miller, J.).
93. 83 U.S. (16 Wall.) at 79.
94. *Id.* at 72.

cause the 1866 Civil Rights Act was on its face an attempt by Congress to guarantee certain privileges of United States citizenship to the recently freed slaves.[95]

Disputes have arisen over the exact purposes that the fourteenth amendment was intended to serve. At least one great Justice of the Supreme Court has entertained doubts about whether the framers intended to create substantive due process.[96] Others have doubted whether corporations are "persons" within the meaning of the amendment's due process and equal protection clauses.[97] Moreover, the Court has divided almost evenly on the question whether the fourteenth amendment "incorporates" the first ten, commonly known as the Bill of Rights.[98] In addition, despite the explicit request of the Court in its order for reargument of *Brown v. Board of Education*, counsel were unable to find conclusive evidence one way or the other on the question whether the framers regarded racial segregation as a form of racial discrimination.[99] On one point, however, there has been no disagreement at all. The fourteenth amendment had its genesis in congressional doubts whether the thirteenth amendment provided a sufficient constitutional basis for the 1866 Civil Rights Act—doubts that had led President Andrew Johnson to veto the bill, which was thereupon enacted over his veto. Thus the desire of Congress to legitimate the 1866 Act may be regarded as the "first cause" of the fourteenth amendment, which was designed to eliminate any question as to the power of Congress to enact it. Yet only seven years later we see Justice Miller denying that such a statute was ever enacted.

The purpose of revealing the shabbiness of the Court's reasoning

---

95. The 1866 Civil Rights Act provided in pertinent part: "That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, or ordinance, regulation, or custom, to the contrary notwithstanding." Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27 (codified in scattered sections of 42 U.S.C.).

96. *E.g.*, Whitney v. California, 274 U.S. 357, 373 (1927) (Brandeis, J., concurring); *cf.* Munn v. Illinois, 94 U.S. 113 (1877).

97. *E.g.*, Connecticut Gen. Life Ins. Co. v. Johnson, 303 U.S. 77, 85 (1938) (Black, J., dissenting); *see* Graham, *The "Conspiracy Theory" of the Fourteenth Amendment*, 47 YALE L.J. 371; 48 YALE L.J. 171 (1938) (2-part article).

98. *E.g.*, Duncan v. Louisiana, 391 U.S. 145 (1968); Adamson v. California, 332 U.S. 46 (1947).

99. 347 U.S. 483, 489-90 (1954).

in the *Slaughter-House Cases* is not to blacken the memory of Justice Miller and his four assenting brothers. We may assume that their decapitation of the fourteenth amendment—by stripping it of nearly all its efficacy as a source of congressional power—was motivated by the highest patriotism. By 1873 the abolitionist crusade had nearly petered out, and the abuses committed in the states of the *quondam* Confederacy by federal troops and carpetbaggers was a festering national scandal.[100] Full and fair effectuation of the fourteenth amendment, initiated by radical Republican abolitionists and ratified only under duress,[101] would have meant legitimation of any legal advantages with which a corrupt Congress and a weak President might elect to embellish federal citizenship—*e.g.*, immunity from state and local taxes or immunity from arrest by state and local peace officers. This was doubtless the reason why the *Slaughter-House Cases*, unlike the three other "self-inflicted wounds" listed by Charles Evans Hughes,[102] provoked no storm of public protest. Yet the enormity of what the Court did in 1873 was publicly acknowledged even by a Richmond, Virginia, lawyer, one William L. Royall, whose struggle to reconcile his satisfaction at the result with his knowledge as a lawyer that violence had been wreaked on the Constitution was expressed in an 1878 article appearing in the *Southern Law Review*.[103]

The need for a congressional amnesty provides an appropriate oc-

---

100. C.V. WOODWARD, REUNION AND REACTION 15 (1951).

101. 2 J. DAVIS, THE RISE AND FALL OF THE CONFEDERATE GOVERNMENT 621-22 (1881); L. ORFIELD, THE AMENDING OF THE FEDERAL CONSTITUTION 71,73-74 (1942); Holifield, *Secession . . . a Right Reserved by the States!*, 18 Ky. S.B.J. 160, 171-73 (1954).

102. *See* note 69 *supra* and accompanying text.

103. "The truth is, when this amendment first came before the Supreme Court for construction, the minds of patriotic men were filled with alarm at the centralizing tendency of the government. The president of the United States was holding a half-dozen states under the armed heel of military despotism; the Congress of the United States was indicating its disposition, strongly and more strongly at each successive session, to encroach upon the reserved rights of the states; and those who wished well to their country looked with sorrowing eyes upon the prospect that the ancient landmarks of the states were to yield before the advancing strides of an imperial despotism. No one can deny that the disposition of the majority of the court to put some construction upon this amendment which would curb the progress of Federal power was a most patriotic one. But was it wise? Can it ever be wise for the court to force a meaning upon the language of the Constitution, to avert a fancied or threatened danger? It is the glory and pride of the institutions of this government that they have successfully withstood every strain to which they have been subjected; and the belief that they are equal to whatever strain may be imposed upon them in the future is the hope and comfort of those who cherish them. Would it not, therefore, have been the part of wisdom, whatever fancied danger might have flowed from giving this amendment a literal construction, to give it that construction, and leave it to the institutions themselves to cure the evils which flowed from it at the ballot-box?" Royall, *The Fourteenth Amendment: The Slaughter-House Cases*, 4 SOUTHERN L. REV. (new series) 558, 576-77 (1878).

casion for the effort to induce reconsideration of the *Slaughter-House* interpretation of the privileges or immunities clause of the fourteenth amendment. It is submitted that the time has now come to repudiate the *Slaughter-House* doctrine and to recognize the fourteenth amendment's privileges or immunities clause as the source of congressional power it was intended to be.

IV. Proposals for Congressional Action

Having concluded that the President has full clemency power with respect to federal offenses and that Congress probably is empowered to grant amnesty to state as well as federal law violators if a national interest will thereby be served, let us turn from problems of the existence of the amnesty power to problems of how the existing amnesty power should be exercised. My own view is that the public interest will be served better by broad rather than narrow amnesty, by early rather than delayed amnesty, and by amnesty granted without conditions designed to humiliate or punish, or to equalize the burden of national service.[104] Such an amnesty will require political courage of a high order. Therefore, I believe that Congress, at a minimum, can and should shoulder part of the political responsibility by a concurrent resolution affirming its approval and support of whatever amnesty the President thinks the public interest demands. This is the least that Congress can do, or at any rate it is the least that I think Congress *should* do.

An amnesty *statute* would constitute an assumption of full political responsibility by Congress. It also would constitute the most authoritative expression of the will of the American people, a consideration whose value we have previously noted.[105]

To avoid any lingering constitutional doubt, and to avoid the type of wrangling by constitutional experts that delayed enactment of the 1964 Civil Rights Act, the effectiveness of a congressional amnesty might be made conditional upon affirmative presidential action. The bill might stipulate, for example, that it would not become law unless the President signed it, or approved it by later public proclamation.[106] Politi-

---

104. As to punishment in the case of arsonists and other serious offenders, I see no objection to imposition of conditions designed for society's protection—that is, conditions comparable to those ordinarily stipulated by probation and parole boards. As to equalization of burden, *see* note 54 *supra*.

105. *See* text following note 27 *supra*.

106. This express limitation would modify the normal procedure prescribed by article I, § 7, clause 2 of the Constitution, which allows a bill to become law without the President's signature *if he does not return it with his objections* within 10 days—Sundays excepted—after it has been presented to him *and if Congress does not prevent its return by their adjournment*. *See* Miller,

cally, such a condition would be of limited importance in view of the unlikelihood that the bill would pass at all without support from the White House.

It may be said that a concurrent resolution approving a presidential amnesty or a statute expressly granting amnesty would be premature at the present time because the war is still being fought. Perhaps this is so, although the objection might be at least partially obviated by a provision delaying the effective date of the amnesty until the President proclaims that hostilities have ended or have been reduced to such a level as to justify the effectuation of amnesty. Even if immediate clemency is deemed premature, however, there is still grist for the congressional mill. It is certainly not too soon to provide the President with all the authority he needs for a full and effective amnesty covering both state and federal offenses, even though he may decide not to exercise it immediately. Congress has followed this course before. For example, the President was vested with authority to fix prices, wages, and rents long before he saw fit to do so.[107] Consequently, when the time did come, he was in a position to act without delay for congressional action. Similar advantages of prompt executive action could flow from legislation authorizing a comprehensive amnesty capable of removing all federal and state political and civil disabilities incurred because of opposition to the war in Southeast Asia.[108]

As of April 1972, most political observers believe that action during the current session of Congress is unlikely. They are probably right, unless an early end to the war and a repatriation of prisoners produces a drastic swing in public opinion within months or weeks. On a subject so complex, however, any action by Congress may need time for public opinion to crystalize—for the polls, official and unofficial, to take the pulse of the nation. Whether or not the present Congress can rightly

---

Congressional Power To define the Presidential Pocket Veto Power, 25 VAND. L. REV. 557 (1972); Note, *The Presidential Veto Powers: A Shallow Pocket*, 70 MICH. L. REV. 148 (1971). Moreover, even if one President refused to sign the bill or expressly vetoed it, his successor could still activate it by a later public proclamation.

107. Economic Stabilization Act of 1970, 12 U.S.C. § 1904 (1970).

108. The foregoing objectives could be accomplished by congressional adoption of the following amnesty bill, which was developed by the author in collaboration with his seminar in drafting at the Columbia Law School. There is no claim that it is superior to some of the bills now pending, particularly the Abzug bill, but it does embody some ideas not yet reflected in any of the bills thus far introduced.

A BILL

To provide amnesty for certain persons who have illegally manifested their opposition to participation in the Southeast Asia War; to approve and authorize amnesty or mitigation of

claim that the amnesty issue is unripe, the next one ought to be made ready for action by being told in unmistakable terms exactly what action the electorate desires. Therefore, every American should consider carefully what the national interest demands and make his views known. This is no time for evasion, procrastination, or silence. Whatever we do, let us do it because we believe it is right—not because we lack the energy, the intelligence, and the courage to think and to speak out.

---

punishment for certain additional classes of such persons; and to provide for restoration of civil and political rights that have been lost or impaired by reason of such illegal acts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

§ 1. **Definitions.**

(a) The term "cessation of hostilities" means the date on which the President shall declare, by public proclamation, either that armed hostilities in Southeast Asia have ended, or that the level of the United States involvement therein has been reduced to such a level as to justify the effectuation of Section 2 of this Act.

(b) The term "person" means any natural or artificial person, including the United States, the several states, and other corporations public, municipal, charitable, or private.

(c) The term "offender" means a natural person who has violated federal or state law solely or partly because of his disapproval of United States participation in the Southeast Asia war.

(d) The term "non-violent offender" means an offender whose offense has involved neither injury to another person nor substantial damage to or theft of the property of another person, nor the threat thereof nor attempt thereat.

(e) The term "federal offender" means an offender whose offense has been a violation of the law of the United States or any territory or possession thereof, or the District of Columbia, including the military law, and including offenders whose punishment has already been completed.

(f) The term "state offender" means an offender whose offense has been a violation of the law of any state or subdivision or municipality thereof, including offenders whose punishment has already been completed.

(g) The term "during the Southeast Asia War" means the period beginning August 10, 1964, and ending with the cessation of hostilities.

§ 2. **Amnesty for draft resisters and certain military offenders.**

(a) Any non-violent offender whose offense has consisted of violation of the Selective Service Act or any regulation thereunder, and whose offense has occurred during the Southeast Asia War, is hereby pardoned.

(b) Any non-violent offender whose offense has consisted of violation of the military law of the United States of America, and whose offense has occurred during the Southeast Asia War (whether or not it has occurred in Southeast Asia), is hereby pardoned unless such violation has consisted of desertion under such circumstances as to endanger directly the life of another member of the armed services of the United States or its allies.

(c) This section 2 shall be ineffective unless the President of the United States shall have declared his affirmative approval, by signing this bill or by public proclamation, and in any event shall be effective only upon the cessation of hostilities.

§ 3. **Approval and authorization of amnesty for other offenders.**

(a) The Congress declares that the interests of the United States require the restoration of domestic harmony at the earliest time; that such interests will be served by the annulment of all legal disadvantages that have been incurred or suffered by reason of opposition to the Southeast Asia War, to the greatest extent consistent with national security and the preservation of internal order; and that it is an immunity of citizens of the United States (within the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States) to enjoy such annulment,

to the extent and on the conditions, if any, that may be authorized or imposed by the President of the United States.

(b) The Congress expresses its approval of such amnesty or mitigation of punishment for federal offenders other than those described in Section 2 (and also for those described in Section 2, unless and until that section shall become effective) as the President of the United States may, from time to time, grant by public proclamation, unconditionally or on such conditions as he may prescribe.

(c) The President of the United States is authorized to restore the United States citizenship of any or all persons who have relinquished such citizenship for the sole or partial reason that they have opposed the Southeast Asia War.

(d) The President of the United States is further authorized to grant, by public proclamation, amnesty or mitigation of punishment to state offenders whose offenses have occurred during the Southeast Asia War.

(e) Any grant of amnesty pursuant to this Act shall have the effect of restoring all civil and political rights that have been lost or impaired by reason of the violation for which amnesty is granted, unless the President of the United States shall otherwise declare in his public proclamation granting such amnesty.

§ 4. **Short title.** This Act shall be known as "The Southeast Asia War Amnesty Act."

§ 5. **Effective date.** Except as provided in Section 2(c), this Act shall be effective immediately.

Mr. KASTENMEIER. The Chair announces that there are a number of people who have statements which will be beneficial to this committee and the record. Without objection, they will be received and included in the printed record. They may be filed not later than 10 days following the last day of hearings, which will be on Wednesday of next week.

I would like to express the fact we are running behind in both our questioning and our testimony, possibly causing us to miss our goal of concluding with six witnesses this morning.

In any event, our next witness is Mr. Walter Morse, General Counsel of the U.S. Selective Service System.

Mr. Morse, we welcome you. You have a relatively short statement and you may proceed, if you will.

TESTIMONY OF WALTER H. MORSE, ESQ., GENERAL COUNSEL, U.S. SELECTIVE SERVICE; ACCOMPANIED BY GLENN BOWLES, MANAGER OF OPERATIONS; HOPKINS CHARLES, DEPUTY GENERAL COUNSEL; AND S. R. SHAW, L. & L. OFFICER

Mr. MORSE. Mr. Chairman, members of the subcommittee, it is a privilege for me to appear this morning, but before I summarize my statement, I would like to introduce my colleagues.

On my left is Mr. Shaw, our L. & L. Officer; and on my immediate right is Mr. Bowles, the Manager of Operations for the Selective Service System; and on my far right is Deputy General Counsel, Mr. Charles.

I shall attempt to summarize my statement as you suggested. Then, I hope we can answer any questions that you might have.

As you noted from my statement, I will not address the legal aspects of amnesty. The Department of Justice has done that. However, as a matter of policy, the administration opposes the House bills that grant amnesty. I shall attempt to state the basis for this opposition.

However, before doing so, I think we should recognize the scope of the problem. We are speaking specifically of section 12 of the Military Selective Service Act, and we are talking of such violations as failure to register or making false statements regarding or bearing upon one's classification or failure or refusal or neglect to perform duties pursuant to Selective Service Act, such as a failure to report or submit to induction. These are the violations we are speaking of. Under the Military Selective Service Act a person who commits such a violation can be subject to 5 years imprisonment or $5,000 fine or both.

What is the point of reference for these crimes? As the bills point out, it is from August 4, 1964 to December 29, 1972, the last day in which a registrant was inducted involuntarily into the armed forces.

So, therefore, we are not talking about amnesty for those who have violated the law since then. For your information, since the Military Selective Service Act is permanent law, in 1973 I referred 3,492 violations for failure to register or register timely. We are not addressing amnesty for these violators.

The extent of the problem during the Vietnam conflict is the System's induction of over 1.8 million men. Initially, 191,840 registrants failed to respond. However, our records show that over 80 percent of these registrants responded when contacted the second time or maybe

the third time. The remainder who failed to respond during this period was 19,271 who were indicted or put under criminal complaint.

However, before standing trial, 10,153 of these violators had their indictments dismissed for the most part for the reason that they too submitted to induction or upon an FBI investigation it was found that their violation was not willful. Of the remaining 9,118, 1,186 were acquitted while 7,932 were convicted. Of these 3,971 were incarcerated while 3,961 were put on probation. As to those incarcerated, 384 received the maximum sentence of 5 years while the average sentence ranged from a high of 37.3 months in fiscal year 1968 to 17.5 months in fiscal year 1973. As of January 16, 134 still remain in prison. However, even of those who were incarcerated, 76 were paroled in the armed services and 5 into alternate service.

It also is interesting to note that in fiscal year 1972, for example, 61 percent of those incarcerated were released on parole after serving only 41 percent of their sentence. Presently, only a handful of convicted violators are being incarcerated after conviction and in one instance a court of appeals remanded a case to the district court with instructions to vacate the conviction upon completion of a parole in the Armed Forces. In addition to the 7,932 convicted violators, as of January 1, 1974, there were 5,119 violators under indictment and another 3,080 under prosecutive determination or an FBI investigation. Of this total number of 8,199, approximately 4,400 are fugitives, of which it is estimated that 3,000 are in Canada, 500 overseas, and the whereabouts of the remaining 900 is unknown. In sum then, we are speaking of a maximum number of less than 17,000 violators who could be affected by a blanket or general amnesty, should such action ever be taken.

This, as you can see, is less than 1 percent of the 1.8 million who were inducted.

Mr. KASTENMEIER. If I may interrupt, actually, there are many others who would be affected by this legislation, are there not? Those who were convicted would be affected?

Mr. MORSE. Those convicted would be affected.

Mr. KASTENMEIER. And other categories quite apart from the 17,000?

Mr. MORSE. No. The 9,000 convicted violators, plus the 5,000 under indictment, plus the 3,000 under prosecutive determination make 17,000. The 9,000 convicted, the 5,000 still under indictment, and the 3,000 under prosecutive review or FBI investigation add up to approximately the 17,000 that could be affected by amnesty.

Mr. KASTENMEIER. All right. You may proceed.

Mr. MORSE. All right, sir.

As you are aware, and I know one of your witnesses will speak to the history of amnesty for draft evaders, but let me just mention that only twice in our history have draft evaders been granted amnesty by the President, once in 1933 and once in 1947, and in both instances only 1,500 received amnesty, and in both instances they were convicted violators who had served their sentences.

Now, as to the basis for our opposition to amnesty, I think there is a misunderstanding as to whether or not these individuals who are violators and perhaps fugitives were entitled and did receive justice at the hands of the local draft boards, as they would have you believe they did not. This question specifically relates to the conscientious objector aspect of the problem. In this regard you are all aware of the

Seeger and *Welch* decisions. Both these decisions after the time they were issued were immediately implemented by the Selective Service System. The *Seeger* decision was given effect by an Operations Bulletin issued on March 12, 1965. After the *Welch* decision local board memorandum No. 107 was issued on July 6, 1970.

You are also aware, I am sure, that we took no action with respect to the selective conscientious objector, the individual who refused because he felt the Vietnam war was immoral, but he was willing to accept the fact that not all wars are immoral. Thus, we followed the Supreme Court decision in *Gillette* and *Negre* in not giving any recognition to this type of a CO.

For the benefit of the chairman and the members of the subcommittee, let me point out that in view of the actions taken by Selective Service, notwithstanding *Gillette*, the local boards did recognize conscientious objectors' claims. Between June of 1964 and June of 1973, 145,807 registrants were classified as CO's.

The second basis on which we oppose amnesty is we too are concerned about the divisiveness in the country, and since we are dealing with a person who failed to report for induction or committed another violation, we have to recognize that there are 1.8 million who did serve their country. Perhaps it can be said they can become a divisive element.

Lastly, and I think most importantly, is the effect on the System should amnesty be granted. As Dr. Curtis Tarr stated in February 1972, "Any widespread program of amnesty would be incompatible with the continuation of inductions." This certainly applies to the future. Any general amnesty would be a signal to those in the future if we should ever have to go back to inductions, and God forbid, that they, too, might be able to evade their responsibilities and obtain amnesty.

Also, with respect to the effect on the System, if amnesty is to be granted to these past violators, what about the violations occurring right this moment, that is, the persons who fail to register? Are they too to get amnesty next year or the year after, just because there may be numerous violators?

In summary, I hope I have shown that those who would qualify for amnesty are few in number, historical precedent and inequity would dictate against the granting of amnesty, and lastly, the disruptive effect in the future on the Selective Service System of providing amnesty to those who refused induction into the armed services could be far reaching.

This concludes my statement, Mr. Chairman, thank you.

Mr. KASTENMEIER. Thank you, Mr. Morse.

Of course, Dr. Tarr, who is from Wisconsin, made that statement 2 years ago when there was a continuation of inductions, and now the situation has somewhat changed.

I assume that if consulted by the President in connection with anything he might do, you would present the same argument to him for his consideration that you would to a congressional committee; is that correct?

Mr. MORSE. This position has been cleared by the administration, yes, sir.

Mr. KASTENMEIER. Is it your view that past amnesties, however, limited or deferred they were, worked to undermine the Selective Service System? I am talking about World War I or World War II amnesties in connection with draft violations. Did this have the effect of undermining your operation?

Mr. MORSE. No, sir, because I think we are speaking of two different situations. In World War I and World War II, amnesties were granted as a result of a board's review of cases, and I think you will find that in each instance the number was small and I think you will find also—I think Mr. O'Neil will probably bear this out—that many of the Truman pardons dealt with Jehovah Witnesses or individuals of that type.

Second, they were all convicted violators and they all had served their sentence. We are not talking about that situation here. That is why I think there is a distinction, I think it would become quite disruptive to the System in the future because we are not dealing with the same situation.

Mr. KASTENMEIER. Would you not concede that the low number of violators arising out of World War II and the large number of violators arising in more recent years during the Vietnam war was in part a result of the view of the war which was held by so many? We are dealing with a great many people and that has to do with how the war was generally perceived; is that correct?

Mr. MORSE. I think the record will show there were many violators in World War I and II. I do not have those specific figures. But I do not think anybody can take the position they were few in number.

Mr. KASTENMEIER. You use the term few in number with respect to those considered by the Amnesty Board.

Mr. MORSE. That is correct, few in number who were granted amnesty, 1,500 in each instance.

Mr. KASTENMEIER. I do not think anyone has suggested in terms of the legislation that violations for nonregistration under current laws be affected; is that not the case?

Mr. MORSE. That is correct, sir. I was merely making the point that if we grant amnesty here, what do we do 2 years from now with respect to those who fail to register now?

Mr. KASTENMEIER. Do you agree, though, they would not have a basis of resisting an unpopular war as a basis for their amnesty? Presumably, there must be some basis for it which would not be the case for violations which might presently occur.

Mr. MORSE. I think if you will read the literature of those who oppose the draft in any form, you will find that they feel that even registering is a sign of involuntary servitude and individuals that do so should be discouraged.

Mr. KASTENMEIER. That may be the view of some, but whether that becomes public law is something else, of course.

I would like to yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much.

On page 4, you state, "It is also interesting to note that in fiscal year 1962, 61 percent of those incarcerated were released on parole after serving only 41 percent of their sentence." Are you suggesting special treatment was given to draft evaders in Federal prisons?

Mr. MORSE. No, sir, I was just pointing that out as a fact.

Mr. DRINAN. Is that better or worse than armed robbers?

Mr. MORSE. Excuse me, sir?

Mr. DRINAN. Is it better or worse than armed robbers, 61 percent were released after serving only 41 percent of their sentence?

Mr. MORSE. I think the Parole Board could answer that question.

Mr. DRINAN. It is interesting, but what does it mean?

Mr. MORSE. I think it means the individuals were not kept in prison for their total sentencing.

Mr. DRINAN. They were, in fact, given special treatment?

Mr. MORSE. I do not know.

Mr. DRINAN. I am asking you why you put the sentence in. It is interesting, but is it significant? If you are suggesting they did receive special treatment and that is the only reason for having that in there, then you are undercutting your argument and they do deserve special treatment and you seem to praise what is happening here.

Mr. MORSE. No, the Board of Parole did put them on parole without serving their full sentence, and that is the argument.

Mr. DRINAN. There is no argument. I do not know what you are talking about. It would be good if you delete it or make it say something.

Do I understand as of January 16, 1974, that 134 are still in prison?

Mr. MORSE. That is correct.

Mr. DRINAN. On page 8, you make this point, that there were 145,807 registrants who were classified as CO's from 1964 to 1973. How many denied that status?

Mr. MORSE. I would have to refer this to Mr. Bowles.

Mr. BOWLES. The System at that time had no capability of keeping record on that.

Mr. DRINAN. You mean, you do not even know?

Mr. BOWLES. No; we would have to go back to every file.

Mr. DRINAN. This figure of 145,000 does not mean anything. I do not know whether it is good or bad or indifferent, or whether twice the number were denied. We do not know what it means.

I recall while reading the Selective Service Director's report in 1971 and 1972, and my recollection is that the number of people who were granted status of CO's really escalated. Was that the result of law or of policy? I do not think it can be attributed to *Seeger* and *Welch*, but why did that happen?

Mr. MORSE. I do not know if it escalated, but between 1964 and 1967, the number was pretty stable at 10,000. In 1968, it went to 13,000; in 1969, 14,000; in 1970, 28,000; and in 1971, 36,000.

Mr. DRINAN. Pretty good escalation. Why?

Mr. MORSE. Well, I think two reasons: One, the size of the pool increased; and two, the application of the *Seeger* and *Welch* decisions.

Mr. DRINAN. But *Seeger* came down in 1965 and *Welch* came down in 1970.

Mr. MORSE. That is correct, sir. So it was in 1968, 1969, 1970, and 1971 that the increase started.

Mr. DRINAN. Except that when did *Gillette* come down?

Mr. MORSE. Excuse me, sir?

Mr. DRINAN. In 1971. You say here sharply restricted the selective CO. How can you attribute this to the law? It seems to me there was

more resistance in the country, and directives went out liberalizing in effect what the boards could do. So you were not really going on the law, it is my recollection, but on the public policy. More CO's were granted, from 13,000 to 36,000 over a period of 3 or 4 years. I do not think you can say that is attributable to *Welch* because *Welch* is sharply curtailed by *Gillette*.

Mr. MORSE. The System responded to both decisions in putting out bulletins regarding the classification for CO's. I have no other reason to believe that local boards did not follow those directions, and as a result more men were classified CO as the pool enlarged.

Mr. DRINAN. Except that you also sent out a memo sharply curtailing that in 1971, as I recall it. That said anybody opposed to participating in the Vietnam war is not entitled to CO status. So how can you say that the *Welch* decision really caused the number of CO's to double or triple?

Mr. MORSE. You are speaking purely of selective CO. I am speaking of the general CO; in other words, he qualifies pursuant to the law passed by Congress and interpreted by the court.

Mr. DRINAN. You mean, all of a sudden they belong to a religion which held that war was wrong, and all of a sudden more people happened to show up who happened to be Quakers? Roman Catholics do not qualify, do they?

Mr. MORSE. *Seeger* and *Welch* did not say that. The court did not relate the classification to a Supreme Being. It did the opposite.

Mr. DRINAN. I know that about *Welch*. But *Gillette* tried to curtail that.

In any event, there were policy decisions entering in where the whole thing was eased, and I think that is demonstrable.

Let me make one further point. On page 8, you say less than 1 percent of these people will be affected by this situation.

Mr. MORSE. That is correct.

Mr. DRINAN. It seems to me you are trying to have it both ways. You turn around on page 8 and say we might have a tremendous devisive element of 99 percent. Are you really serious that the 99 percent are going to be a divisive element? Do you think they will be a devisive element to the 1 percent?

Mr. MORSE. I think so, sir. I served 4 years and every gentleman here at this table also did, and I think many of us would feel that as an American.

Mr. DRINAN. You also feel that people should follow their conscience if that is the way their conscience leads them, and the law provides that?

Mr. MORSE. So long as it is within the framework of the law; yes, sir.

Mr. DRINAN. What percent? If the other gentlemen are getting what they are entitled to?

Mr. MORSE. If the President should grant amnesty, I cannot see what effect it would have; but until he does, I cannot believe that most of these individuals, this other 99 percent, would be in favor of amnesty.

Mr. DRINAN. Have you seen any public opinion polls lately?

Mr. MORSE. Yes, sir, I have.

Mr. DRINAN. They are quite the opposite of what you say.

On page 9, it seems to me, you argue from historical precedent and you assume there that historical precedent has something to say. But going back to the point made by the chairman that you are assuming that the Vietnam war is just like any other war that we have had, then it really breaks down, does it not? Historical precedent does not mean a thing because we have never had a nation in turmoil like we have had over the Vietnam war?

Mr. MORSE. I would say no, sir, we had a civil war.

Mr. DRINAN. Good point.

But would you concede, though, absent that, that you cannot argue, really, that Vietnam is in a long line, and historical precedent says we should not give amnesty?

Mr. MORSE. I do not think I concede that, sir.

Mr. DRINAN. Thank you.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, sir.

Mr. Morse, the chairman asked a question about those who failed to register, and I think that it is contended by some that from 1964 through 1972 there were hundreds of thousands of young men who did not register and who should perhaps now be considered for amnesty. Would you comment on that?

Mr. MORSE. Yes, sir, I would be glad to.

I think the statement is incorrect. Since Mr. Bowles the System's operations manager is here today, he can point out to you why that statement is incorrect.

Basically, it is because our figures when compared to the census figures would not prove that point.

Mr. Bowles.

Mr. BOWLES. We have been and are quite interested in registration, as you may be well aware. We have had observations, made by some that we have not been registering all the young men who are required to be registered by law. Notwithstanding, when we made an analysis the population figure that we can support compares favorably with that we gathered from the Census Bureau. We have found that we have registered more males than the April 1, 1970, census statistics indicate. However, when comparing the total registrations for the calendar year of 1973 with the figures of the 1970 census you find that those men who were age 15 in the 1970 census, number approximately 2,053,000. Our records for last month, which was January, indicated that based on February 5 figures we could expect 1,854,859 registrations, which is 10 percent short of the census figure at this time.

Nevertheless, since we have extended the registration time in which to register to 30 days after a young man reaches his 18th birthday, we are certain that we should account for more men in 1973 than the Census Bureau has given us.

I do not know all the reasons for the 10 percent shortage for 1973, but I know that there are many intangibles to be considered when comparing the total registrations of a year group. There are men who are in the service when it is time for them to register. So I think we would assume the position that we are registering up to our capacity, and to our capabilities, in what we would be expected to register.

Mr. SMITH. You would think, then, that there were not hundreds of thousands who had failed to register?

Mr. BOWLES. Not hundreds of thousands in a year, not 2 million over a 10-year period.

Mr. KASTENMEIER. Would the gentleman yield on that point?

Of course, there are various interpretations, but most recently, on March 1, we received from the Assistant Attorney General, Mr. Henry Petersen, the following statistic. The following is a statistical summary by individual years referred to U.S. attorneys, nationwide, as draft law delinquents from 1963 through 1973, and even including the first months of 1974. That total is 206,775 men, as distinguished from the 17,000 violators referred to by Mr. Morse.

Mr. MORSE. I think, sir, if I may answer that quesetion, he is speaking of the individuals who initially failed to report for induction. I used the figure of 191,000. He uses 200,000. He is speaking of the referral of the first violation in which the individual did not report for his induction. As I stated, over 80 percent of those violators originally reported to the U.S. attorney, did finally report. They were the initial violations. However, the System gives the opportunity to the man a second time and sometimes a third time to report. The figure of 200,000 is the initial violations and not the final violations before prosecution is undertaken.

Mr. KASTENMEIER. If the gentleman from New York will yield a bit further, the question then is concerning the 17,000 figure you gave us as distinguished from the 200,000 or 190,000 figure, how many of those individuals might still have been affected in one way or another?

Mr. MORSE. None. They purged themselves. They purged themselves completely. Only the 17,000 remain. The rest purged themselves completely. They have nothing on their record.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. Were they purged either by submitting——

Mr. MORSE. Submitting to induction.

Mr. SMITH. Submitting to induction at a later date.

Mr. MORSE. Or as a result of a Federal Bureau of Investigation report it was found their violation was not willful. For example, they never received their induction order. That is how they were purged of the initial violation.

Mr. SMITH. Mr. Morse, what is your System doing about the young men who arrive at the age of 18 now and who do not register for some reason, particularly the reason that they may not know about it, and who perhaps then would later come in with a request for amnesty?

Mr. MORSE. Yes, sir. The Director, realizing that many people felt the draft had ended and did not realize the Selective Service Act is permanent law and that they must register, did three things. One, he initiated a publicity program with eye-catching posters around the country to encourage people to register. He also went to the States soliciting uncompensated registrars. Every opportunity was given to the individual to make it easy for him to register.

In addition, he has initiated a mail-in registration for those who cannot find a registrar to register with.

Now, with respect to those who still do not get the word or refuse to register, the Department of Justice issued a memorandum on this very subject and it was dated February 13. You might wish to question the Department of Justice further on its policy. In addition, as a result of

an understanding with that Department the failures to register and the late registrations are coming directly to my office for review. I have been given certain authority by Mr. Petersen in the review of these violations. Where there is a willful and deliberate attempt to violate the law, I must refer those to the U.S. attorney for prosecution. I have reviewed approximately 3,500 of such violations in the last 3 or 4 months, and I have referred approximately 750 violations to the U.S. attorneys for prosecutive determination based upon the guidelines I received.

The problem exists, but I think it is a problem we can cope with in view of the actions taken by the Director of Selective Service such as good publicity, making more registrars available, and the mail-in registration. As a result of this I think people will register and very few will refuse to do so.

Mr. SMITH. Well, I am glad to hear the System is making attempts to see that young men get the word.

Mr. MORSE. Thank you, sir.

Mr. SMITH. Thank you, Mr. Morse.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Morse, I gather from your testimony that you accept the legal argument from Justice that it is not constitutional for Congress to act in this area. Is that correct?

Mr. MORSE. I have no authority to question it, sir.

Mr. MEZVINSKY. You have no authority to question it. You are also saying there are no circumstances whatsoever that would justify the granting of amnesty; is that right?

Mr. MORSE. That is the administration position; correct, sir.

Mr. MEZVINSKY. Based on that, you think it would have a very divisive and disruptive effect not only on the Selective Service System but on justice in general; is that right?

Mr. MORSE. I feel that granting of amnesty would have a bad effect on the future of the System, and frankly, I feel it would be divisive itself within the country.

Mr. MEZVINSKY. Mr. Chairman, I am interested in the Justice Department's legal argument that Congress cannot act and that there should not be the granting of amnesty or immunity under any circumstances. Ironically, we have the presidential matter in front of our committee and if this investigation shows there was a violation of law, your position would not allow Congress to grant any immunity or amnesty in that area as well. So it is a very thought provoking and timely argument. I shall keep it in mind.

Thank you.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. Mr. Morse, if you listen to the testimony of the Department of Justice, as I gathered, their position legally is that it is a murky, controversial issue as to whether Congress has power to grant amnesty. They tend toward the view that Congress does not, but I think they are not making a flat statement that that is the constitutional basis of it, that it is impossible for Congress to do it. Would you say that is about right?

Mr. MORSE. As I have said, I have to accede to the Justice Department's position. It speaks for the Executive on the law. They set the pace, we follow it. So anything I could say would be meaningless.

Mr. SMITH. Thank you.

Mr. KASTENMEIER. I think the gentleman from New York has correctly restated the Justice Department position.

Thank you, Mr. Morse. We appreciate your testimony.

Mr. MORSE. Thank you.

[Mr. Morse's statement follows:]

STATEMENT OF WALTER H. MORSE, GENERAL COUNSEL, SELECTIVE SERVICE SYSTEM

Mr. Chairman and members of the Committee, it is a privilege for me to appear before you today on behalf of the Selective Service System at your Hearings into the question of amnesty for draft evaders and deserters.

I shall defer to the Department of Justice witness to discuss with you the legal aspects of amnesty. However, it is essential to understand that when we speak of amnesty we speak not only of the release from punishment but also the expunging of the existence of guilt to the extent that one's civil rights are restored as though the offender is as innocent as if he had never committed the offense. With this in mind, I shall address myself to amnesty as it may pertain to the Selective Service System.

With regard to House Concurrent Resolutions 144 and 385 which make it the sense of Congress that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President for persons who are in violation of the Military Selective Service Act, we take no position on whether affirmative action either is necessary or desirable. With respect to House bills—H.R. 236, 674, 2167, 3100, 5195, 10979 and 10980, submitted for our comment with your letter of February 22 to the Director of the Selective Service System, we recommend they not be enacted by the Congress. As you know, the scope of those bills extend from general to selective amnesty and from a requirement for earned immunity to no such requirement. In all cases, however, amnesty is provided for. I shall attempt to state the basis for this position of opposition.

Pursuant to Section 12 of the Military Selective Service Act (50 App. U.S.C. 462), a failure to register, the making of a false statement regarding or bearing upon one's classification, or a failure or refusal or neglect to perform any duty required of one under regulations made pursuant to the Military Selective Service Act, such as a failure to report or submit to induction, may subject that person to punishment by imprisonment for not more than five years or a fine of not more than $10,000 or both. It is to these violations of the Military Selective Service Act, for the most part, that the question of amnesty would have to be addressed. In addressing them, however, a timely point of reference should be established for the Vietnam conflict which would appear to be the period from August 4, 1964 (the date of the passage of the Tonkin Gulf Resolution) to December 29, 1972 (the last day in which a registrant was inducted involuntarily into the Armed Forces). Although the general induction authority provided in Section 17(c) of the Military Selective Service Act expired on July 1, 1973, 3,492 violations for failure to register or register timely have been referred to the United States Attorneys for prosecution during calendar year 1973. These violations are not being considered in any deliberations on a queston of amnesty. However, it must be recognized that equity cannot be achieved if amnesty is permitted for all prior violations.

During the period of the Vietnam conflict 1.8 million men were involuntarily inducted into the Armed Forces, 300,000 more than during the Korean War. Although 191,840 registrants failed to respond initially to their order to report for induction for one reason or another, most of them eventually did. It is with the remainder that we must concern ourselves. Statistics show that of them, 19,271 were indicted or put under a criminal complaint. However, before standing trial, 10,153 of these had their indictments dismissed for the most part for the reason that they too submitted to induction or upon an FBI investigation it was found that their violation was not willful. Of the remaining 9,188, 1,186 were acquitted while 7,932 were convicted, of these 3,971 were incarcerated while 3,961 were put on probation. As to those incarcerated, 384 received the maximum sentence of five years which the average sentence ranged from a high of 37.3 months in FY '68 to 17.5 months in FY '73. As of January 16, 134 still remain in prison. However, even of those who were incarcerated 76 were paroled in the armed services and 5 into alternate service. It also is interesting to note that in FY '72, for example, 61% of those incarcerated were released on parole after

serving only 41% of their sentence. Presently, only a handful of convicted violators are being incarcerated after convicted and in one instance a Court of Appeals remanded a case to the District Court with instructions to vacate the conviction upon completion of a parole in the Armed Forces. In addition to the 7,932 convicted violators, as of January 1, 1974, there were 5,119 violators under indictment and another 3,080 under prosecutive determination of an FBI investigation. Of this total number of 8,199, approximately 4,400 are fugitives, of which it is estimated that 3,000 are in Canada, 500 overseas, and the whereabouts of the remaining 900 is unknown. In sum then, we are speaking of a maximum number of less than 17,000 violators who could be affected by a blanket or general amnesty, which amounts to less than one per cent of the total number of inducted men during the Vietnam conflict.

I now wish to turn briefly to the history of amnesty for draft evaders in this country and then address the issue itself. As I am sure you are aware, only twice in our history has amnesty been granted, and when granted, only then in a selected manner, that is, first in 1933 and secondly in 1947. You will recall that President Roosevelt fifteen years after World War I granted amnesty to some 1,500 convicted violators of that war while President Truman did the same for a like number of violators from World War II. In both cases convictions were reviewed and those persons deemed to be deserving were recommended for clemency. The 1947 Board reviewed over 15,000 cases, recommending amnesty only in one out of every 10 cases. Also in 1933 and 1947 all sentences had been served by the convicted violators before amnesty was granted. There was no amnesty granted after the Korean War. I have defined the extent of the problem, because, in my opinion it has a significant bearing on the issue of amnesty. The numbers of violators and historical precedent should not be ignored in addressing the issue.

There are those who in the name of morality contend that he who refused to serve his country did it out of a sense that his country was wrong and he was right about our involvement in the conflict in Vietnam. They contend that such a violator had a "true sense" of right and distinguished it from wrong. He responded to a higher law or morality. Yet let us not forget that each one of them had his chance to prove his belief and eligibility for the recognized conscientious objection status under the conditions described below. Now, after the fact, he contends that if not truly a conscientious objector he is at least a "selective" conscientious objector and should be recognized as such. If this should be the case it would appear to make a mockery of the efforts of the 17,000 local board members who faithfully served their country without pay and did their duty as they saw it.

For those who believe that many if not all of the 8,199 outstanding violators, particularly the estimated 4,400 of this number who are fugitives, are in fact conscientious objectors, the facts would appear to belie such a conclusion. On July 6, 1970, Local Board Memorandum No. 107 was issued which set forth the criteria for classification of conscientious objectors as had also been the case under Operations Bulletin No. 270 issued on March 12, 1965. Local Board Memorandum No. 107 gave effect, as presently does Chapter 661 of the Registrants Processing Manual, to the Supreme Court's rulings in *U.S.* v. *Seeger*, 380 U.S. 163 (1965), and in *Welch* v. *U.S.*, 398 U.S. 333 (1970). In the 1965 decision it held that an individual seeking to qualify for draft exemption as a conscientious objector does not have to believe in the existence of a "Supreme Being" in its most orthodox sense and in 1970 the court further stated that the conscientious objector may even embrace any individualistic or "homemade religion" which is so sincerely and deeply held as to guide the conduct of his life in the same way that a traditional pacifistic religion would guide one of its adherents. However, as you may know, the Supreme Court refused in the decisions of *U.S.* v. *Gillette* and *Negre* v. *Larsen*, 401 U.S. 437 (1971) to recognize the "selective" conscientious objector who is opposed to participating in a particular but is not opposed to participating in all wars. Thus, it can be concluded that if within the 8,199 outstanding violators there are *Seeger*-type conscientious objectors, they would all have to pre-date the year 1965 since the System by Operations Bulletin No. 270 gave effect to this decision at that time.

If they are *Welch*-type conscientious objectors, their violations would have to have occurred before 1970 since Local Board Memorandum No. 107 gave effect to the *Welch* decision at that time. Obviously, however, if they are "selective" conscientious objectors, they have not been afforded relief by the courts or the procedures of the Selective Service System. Notwithstanding, whether these

violators be of the *Seeger*, *Welch*, or *Gillette*-type, it would appear at this point in time that if there is to be validity to their contentions, these alleged-to-be conscientious objectors should have filed a claim with their local boards for such a classification prior to their violations and not now be permitted to do so after the fact. I am not aware that they did. However, I am aware that from June 1964 to June 1973, 145,807 registrants were classified as conscientious objectors. Accordingly, it must be recognized that the System did respond to a bona fide claim for such an exemption.

Then too there are those who say that not to forgive and forget keeps open the wound of divisiveness. We should remember the 1.8 million who served, perhaps in some instances without total commitment. Truly those who served and sacrificed as an obligation to their country may become the divisive element should amnesty be granted to the less than one per cent who failed to meet their duty. The patriotic youth who complied with the law of the land risked his life and gave up his personal freedom for a period of two years.

As Dr. Curtis W. Tarr, the former Director of the Selective Service System, stated in February 1972 before a Subcommittee of the Senate Judiciary Committee "any widespread program of amnesty would be incompatible with the continuation of inductions." If the world situation should make it necessary for the System again to reinstitute inductions, general amnesty for past violators might well convince some young men in the future that they had little to lose by evading military service. Further, since the Military Selective Service Act is permanent legislation and requires a person to register when he becomes eighteen, even during periods of no induction, the person who refuses to do so must be prosecuted. How can we explain or justify amnesty for those who broke the law in times of armed conflict but refuse it for those in time of peace? Such a position is illogical on its face.

In summary, I hope I have shown that those who would qualify for amnesty are few in number, historical precedent and inequity would dictate against the granting of amnesty, and lastly the disruptive effect in the future on the Selective Service System of providing amnesty to those who refused induction into the Armed Services could be far reaching.

This concludes my statement, Mr. Chairman, thank you.

Mr. KASTENMEIER. Next, the Chair would like to call Father J. Bryan Hehir, director of the Division of Justice and Peace, United States Catholic Conference.

TESTIMONY OF REV. J. BRYAN HEHIR, DIRECTOR, DIVISION OF JUSTICE AND PEACE, UNITED STATES CATHOLIC CONFERENCE

Mr. HEHIR. Mr. Chairman, as you noted, I am director of the Division of Justice and Peace, which is the civil agency of the Catholic bishops of the United States.

I appreciate the opportunity to present the views of the conference on the question of amnesty to this subcommittee.

The agreement the United States and other nations signed over a year ago brought a formal cease-fire to the war in Vietnam. We must acknowledge, however, that this action did not achieve fully the expectation of establishing peace for the people of Indochina, nor did it eliminate all of the conditions which that most tragic war inflicted upon the people of the United States.

Domestically, the effects of the war are still with us; in fact, there is a risk that its aftereffects can leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve the situations which cause divisions among us, in a spirit of reconciliation. Reconciliation is the theme and motivating idea of this presentation; reconciliation is also the primary need of the moment in this country.

The manifestations of the need for reconciliation are nowhere more apparent than in the lives of those directly touched by the war. The consequences of the war are diverse and call for a plurality of modes of reconciliation. On a prior occasion, the Catholic bishops of the United States called attention to the needs of returning veterans, especially the wounded and the prisoners of war. In the last few weeks, some of these very men have come to Washington to remind the Congress and the country that their needs have not been adequately met as yet. The reintegration of these returning veterans into the full life of the society and the provision for their medical, social, and economic needs is one dimension of reconcilation due to them because of the valor they have displayed and the sacrifices they have made.

An equally important task of reconciliation to which we would like to give specific attention in this testimony, however, relates to those young men whose critical judgment of the Vietnam war led them to resist military service. This testimony today in favor of amnesty is rooted in prior evaluations which the American Catholic bishops have made about these young people. For example, in 1968, the bishops offered the following assessment of those who oppose military service:

> There is sometimes ground for question as to whether the attitudes of some toward military duty do not spring from cowardice. In this problem, as in all crises which test generosity and heroism, cases of moral as well as physical cowardice doubtless occur. But a blanket charge of this kind would be unfair to those young people who are clearly willing to suffer social ostracism and even prison terms because of their opposition to a particular war. One must conclude that for many of our youthful protesters, the motives spring honestly from a principled opposition to a given war as pointless or immoral.
>
> Nor can it be said, the Bishops continued, that such conscientious objection to war, as the war is waged in our times, is entirely the result of subjective considerations and without reference to the message of the gospel and the teaching of the Church; quite the contrary, frequently conscientious dissent reflects the influence of the principles which inform modern papal teaching, the Pastoral Constitution [of the Second Vatican Council] and a classical tradition of moral doctrine in the Church, including, in fact, the norms for the moral evaluation of a theoretically just war. ("Human Life in Our Day," ch. 2, *The Family of Nations*, November 1968.)

The purpose of recalling these words is to focus our concern today on those who have suffered prison terms and social ostracism, even to the point of self-imposed exile, as a result of their opposition to the war. It is the belief of the Catholic Conference that in the present context of our country, the granting of amnesty is a work of reconciliation.

It is important to specify what we mean by amnesty; to grant amnesty requires both an understanding of its precise meaning and a recognition of how it relates to reconciliation.

As has been pointed out previously today, amnesty does not mean that society or the Nation "forgives" a person for his unlawful acts. Rather, amnesty is a healing act of deliberate and selective "forgetting," used in situations where the Nation both admits its own need for reconciliation and recognizes that need for healing of injustices suffered by the individuals in question. To grant amnesty, then, brings about healing and reconciliation to some divided members of society and reconciliation of these members with society as a whole. The Government's grant of amnesty becomes the law's own way of undoing what the law itself has done.

Who should be granted amnesty? We find three broad categories of cases. First, those young men who were subject to the draft but whose informed conscience led them to oppose participation in the Vietnam war, even though they could not say in conscience that they were opposed to all use of military force. These selective conscientious objectors are now serving prison terms. We do not believe any useful purpose is served at this time by continuing the incarceration in Federal prisons of these young men whose consciences instructed them not to engage in the killing and dying of the Vietnam war. Therefore, for this first group I would repeat the injunction of the American Catholic bishops made in 1971:

> We urge civil officials * * * to consider granting amnesty to those who have been imprisoned as selective conscientious objectors ("Declaration on Conscientious Objection and Selective Conscientious Objectors," Oct. 21, 1971).

Secondly, we also recognize that an additional group of young men are in a somewhat similar position—that is, men in military service—who for reasons of their consciences were compelled to refuse to serve in the war and who were imprisoned or given less-than-honorable discharges. Here again the complicating impact of selective conscientious objection upon the structures of military law is evident. However, we do not believe that the individual forfeits his right to exercise the dictates of his conscience once he enters the ranks of the military, or for that matter, any other form of employment. The request for amnesty for selective conscientious objectors in Federal prisons, therefore, we believe, should also be extended similarly to men in military jails.

Thirdly, there is the group of young men who have left the country or who have remained in the country as fugitives from the law because they felt compelled to follow their consciences rather than the law. Certainly, their experiences of sufferings and separation have been trying for them personally as well as for their families and friends. We are here to again urge officials and all Americans to respond to their conspicuous need to find a solution to the problems of these men through the reconciling work of amnesty.

Perhaps the heart of my testimony is to answer why should amnesty be granted to these men? I have already cited one reason: the political and spiritual need to deal with the divisions in the fabric of our national life. There is, however, also a second reason of the moral or jurisprudential order. All three of the categories cited are made up of men who held the position of conscientious objection to a particular war, that is, selective conscientious objection. Catholic teaching on the morality of warfare fully supports those who, with informed conscience, oppose participation in all forms of warfare. The dominant moral position in the Catholic community for several centuries, however, has been the moral doctrine of the just war. This position, while legitimating the use of force against injustice in political affairs as the *ultima ratio*, refuses to condone any and all uses of forces. Such a teaching, requiring the individual to exercise responsible discriminating judgment about the moral validity for each use of force, is the matrix from which the judgment of *selective* conscientious objection issues.

Because selective conscientious objection is so explicitly a product of a Catholic moral doctrine, the American bishops expressed their concern in 1968 about the inadequacy, indeed the injustice, of the failure of our legal system to provide for this very sound moral posture. They said:

> The present laws of this country, however, provide only for those whose reasons of conscience are grounded in a total rejection of the use of military force. This form of conscientious objection deserves the legal provision made for it, but we consider that the time has come to urge that similar consideration be given those whose reasons of conscientious objection are more personal and specific ("Human Life in Our Day," chapter 2, The Family of Nations, November 1968.)

This testimony today is motivated by the fact that because of the inadequacy of the civil law a number of individuals suffered and are still suffering imprisonment, or have left the country and are still in voluntary exile, or have taken refuge from the law, because they felt compelled to follow their consciences rather than the law. The failure of the law to provide for the selective conscientious objector position compelled the Bishops in 1968 to recommend that the law be revised by enacting "a modification of the Selective Service Act, making it possible, although not easy, for so-called selective conscience objectors to refuse—without fear of imprisonment or loss of citizenship—to serve in wars which they consider unjust, or in branches of the services (e.g., the Strategic Nuclear Forces) which would subject them to the performance of actions contrary to deeply held moral convictions about indiscriminate killing." (Ibid.)

In taking this position this morning and in the past, there is no attempt to underestimate the difficulties of the jurisprudential problem involved here for legislators in seeking to construct a law which respects both demands of public order and the dictates of an informed conscience protesting the character of a specific instance of warfare. Rather, the intention is to highlight the notion that where the imperatives of the moral law contradict the demands of the civil law in a properly formed conscience, in Catholic teaching the moral order must take precedence. This primary of the informed conscience was the basis of the following counsel offered by the Bishops in 1968 when they said:

> Whether or not such modifications, [meaning the Selective Service Act], in our laws are, in fact, made we continue to hope that in the all-important issue of war and peace, all men will follow their consciences. We can do no better than to recall, as did the Second Vatical Council, "the permanent binding force of universal natural law and its all-embracing principles, to which man's conscience itself gives ever more emphatic voice." (Ibid.)

In 1971, the Bishops explicitly specified their support of selective conscientious objection:

> In the light of the gospel and from an analysis of the Church's teaching on conscience, it is clear that a Catholic can be a conscientious objector to war in general or to a particular war because of religious training and belief. ("Declaration on Conscientious Objection and Selective Conscientious Objection," Oct. 21, 1971)

On three occasions, "The Catholic Conscientious Objector," October 1969; "Military Conscription," March 1971; "Declaration on Conscientious Objection and Selective Conscientious Objection," October 1971, the U.S. Catholic Conference reiterated the Bishops' original

recommendation in 1968 for a change in the Selective Service legislation affecting selective conscientious objectors. However, in fact, the law was not changed.

Obviously, in the view expressed in these statements we still have an unfinished jurisprudential agenda in our country on the issue of selective conscientious objection. The purpose of this testimony today is not to discuss this question in detail, but to illustrate that support for amnesty is rooted in the moral judgment that the problems of many of the young men in voluntary exile or those who are underground or those in prison were caused by the sensitivity of their consciences to the war and the insensitivity of our civil law to their conscience.

Before I conclude the testimony, I request your permission to submit in the record the statements referred to by the Bishops and also an article by Leroy Walters, who has written the best history of the just war available today and he published an article in the Journal of the American Academy of Religion.

Mr. KASTENMEIER. Without objection, the documents you referred to will be received for the record.

[The documents referred to appear at pp. 179–200.]

Mr. HEHIR. Thank you.

What should be our response as a Nation to this situation? I would offer guidelines. First, I think it is clear that the Nation's need for reconciliation is ill-served by offering these men full citizenship only on the condition that they first serve prison terms for violating a seriously inadequate law.

Second, as one guideline for determining the form amnesty should take, I would repeat the pastoral concern expressed by the Catholic Bishops of America in 1971, that "civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open *in principle* to some form of service to the community" (Italics added) ("Resolution on Southeast Asia," November 1971)

In principle, one of the objectives of the Nation is to protect individual rights. In practice, the Nation's laws and their enforcement are not always consonant with that principle. In principle, persons have rights and duties as citizens of the Nation. In practice, these rights and duties are often imperfectly fulfilled. Such a catastrophic experience as the Vietnam war placed a tremendous strain on the delicate network of the relationship between the Nation and citizens, and upon the rights and duties of each. While the requirement in principle of alternative service is both a possible and reasonable requirement as a condition of amnesty and one which still commands our consideration, I would wish to stress today that it is not the only way, nor perhaps even the best way at the moment to promote reconciliation or to resolve this residual moral dilemma of the Vietnam war. I submit that the requirement of quid pro quo, in the present case, may be more than either reason or reconciliation require.

In any case we need to keep before us the preeminent need of these trying times: motivated by a spirit of reconciliation, the Nation must surely find a way in principle and in practice to integrate these men back into society. This process requires that both parties in principle and in practice show a great spirit of generosity, and accept the weaknesses of the other party, that is, on the one hand, the Nation's failure

to design appropriate legislation, and on the other, the individual's failure to find a way of objecting to the war more acceptable to the total community. We feel an attempt with this spirit represents the best tradition, moral and political reflection.

Thank you.

Mr. KASTENMEIER. Thank you, Father Hehir, for such an excellent statement. It certainly represents a high sense of morality.

I am wondering, practically speaking, to what extent do you think that your communicants and the general American community are as ready to accept amnesty as of this hour in our history?

Mr. HEHIR. I think this is a very pertinent question for these hearings and to test the position I have stated.

I think the position I have stated is based on two pillars, if you will, one is reconciliation and one also is an attempt to demonstrate that there is an objective basis as to why it should be considered at this moment.

I think the question of the readiness of people to be reconciling and forgiving at this time is still a problematical issue. I feel that at this moment, for instance the purpose of these hearings is in a sense educative of the American public, to foster debate on this question, to try and call attention to the shape of the country, both personally and collectively and to ask the question whether in the face of several intractible problems we have that do not yield easily to solutions, whether we need to continue this problem on the agenda with all these other intractible problems when in fact, what I think really is the deepest part of human nature, mercy, is one way out of this. I think the public can be educated in terms of what is best in the spirit of this country. I do not think at the minute you might get a majority vote on it, but the function of these hearings is precisely to try to motivate that factor.

Mr. KASTENMEIER. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

Thank you, Father Hehir, for this eloquent statement.

Would you say that all churches and synagogues, all religious groups in America would concur in general with your sentiments here?

Mr. HEHIR. That is a very broad question, Father. I do not have empirical data with which I could immediately footnote my answer. I would say most churches agree with the general spirit of the statement, and I think the objective moral doctrine, as you know, is not a particularly catholic doctrine. It is a natural law doctrine which I think in some way can be directly related to the whole constitutional position in the West. Most churches would support it.

Mr. DRINAN. In your extensive readings and in all of your background as an expert in this area, you have never heard of any church or synagogue who really dissents from any principle in your statement?

Mr. HEHIR. No.

Mr. DRINAN. Well, it is good to know the Roman Catholics are singing from the same hymn book in some areas.

I am troubled, Father, by some of your statements or ambiguities about alternate service. In 1971 the bishops said that civil authorities should grant a generous pardon of convictions and that the sincere CO should remain open in principle to some form of service to the community. I never have understood that sentence, "should remain

open." But you go on and say while this requirement of more than a service is both a possible and reasonable requirement as a condition of amnesty, you go on and say that we really do not hold it any more. Then you have the punch line wherein you say that you do not think really that this requirement can be justified by reason or reconciliation. Then, you start the next paragraph saying "In any case." Now, how does it come out?

Mr. HEHIR. I am trying really, to deal with two levels of a question here. Obviously, the thrust of this testimony is directed toward a jurisdictional problem which is still unresolved. A number of the statements of the Bishops say we should try and resolve that in case we face another conflict—how are you going to adjudicate the issue then?

On that level of the question, I think it is obviously not a simple question.

Mr. DRINAN. Why is it not?

Mr. HEHIR. Because, it seems to me, you are trying to balance the requirements of public order against the requirements and dictates of the informed conscience.

Mr. DRINAN. Having somebody do 2 years of noncombative service is not going to help the public. What is the point of it? You give the argument for a reasonable requirement as a condition of amnesty. If the person was correct and the society was wrong then it does not promote public order to require him to have a punishment or penalty for being right.

Mr. HEHIR. I am trying to preserve the structure of argument. As I say, on the level of principle there are—on the specific level of Vietnam, the split in the country, the fact there was no provision in the law, while one still needs to argue about how we might shape the law, perhaps the best way to solve the problem of Vietnam is just grant unconditional amnesty. I am putting that forward for part of the public discussion.

Mr. DRINAN. Would you agree with previous witnesses this morning that alternate service is, in fact, a penalty or punishment?

Mr. HEHIR. In principle, I do not agree with that. Whether it is a proper response to the question of amnesty for the Vietnam war, I have severe doubts about that.

Mr. DRINAN. All right. If you could clarify anything further on that it would be of value because obviously that is an essential element of any bill that we try to write.

Mr. HEHIR. What I am trying to do there again is to preserve two different questions, and one is really not the amnesty question. I am trying to line up the moral elements of that problem. On the selective conscientious objector question you introduce all the historical material of the split in the country about Vietnam, the lack of the law, the inadequacy of counseling procedures for people who went before draft boards. In other words, part of setting up proper adjudication for the conscientious objector and the selective conscientious objector is to get at the question that Mr. Schwarzschild raised that the law works to the disfavor of those who do not have immediately at their access membership in a church. Additionally there may be a race factor and also we need to provide public counseling in an open way. That was not there and perhaps again the best way to resolve the issue is to wipe it from the books.

Mr. DRINAN. The very term "alternate service" suggests these people did not do service to the country and you are still perpetuating the myth that it was a good war, and they should have given service. That contaminates the argument.

Mr. HEHIR. The positions that support that sentence are not particularly the assumptions which I just built into the question. I do not mean to build into this conclusion the assumption that the war was just and everyone who was seeking amnesty, the burden of proof is on them.

Mr. DRINAN. Thank you very much.

I have no further questions.

Mr. KASTENMEIER. Thank you, Mr. Drinan.

I now yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Mr. Hehir, for this good statement. My questions will concern themselves with what Father Drinan asked you. I was very much interested in your answers. Thank you very much.

You speak of SCO, that is selective conscientious objector?

Mr. HEHIR. Yes; that is right.

Mr. KASTENMEIER. Thank you, Father Hehir, for your testimony this morning.

[Father Heher's statement follows:]

STATEMENT OF REV. J. BRYAN HEHIR, DIRECTOR, DIVISION OF JUSTICE AND PEACE, UNITED STATES CATHOLIC CONFERENCE

I am J. Bryan Hehir, Director of the Division of Justice and Peace of the United States Catholic Conference. I appreciate the opportunity to present the views of the Conference on the question of amnesty to this Subcommittee.

The agreement the United States and other nations signed over a year ago brought a formal cease-fire to the war in Vietnam. We must acknowledge, however, that this action did not achieve fully the expectation of establishing peace for the people of Indochina, nor did it eliminate all of the conditions that most tragic war inflicted upon the people of the United States.

Domestically, the effects of the war are still with us; in fact there is a risk that its after-effects can leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve the situations which cause divisions among us in a spirit of reconciliation. Reconciliation is the theme and motivating idea of this presentation; reconciliation is also the primary need of the moment in this country.

The manifestations of the need for reconcilation are nowhere more apparent than in the lives of those directly touched by the war. The consequences of the war are diverse and call for a plurality of modes of reconcilation. On a prior occasion the Catholic bishops of the United States called attention to the needs of returning veterans, especially the wounded and the prisoners of war ("Resolution on Imperatives of Peace," November 16, 1972). In the last few weeks some of these very men have come to Washington to remind the Congress and the country that their needs have not been adequately met as yet. The reintegration of these returning veterans into the full life of the society and the provision for their medical, social and economic needs is one dimension of reconcilation due to them because of the valor they have displayed and the sacrifices they have made.

An equally important task of reconcilation to which we would like to give specific attention in this testimony relates to those young men whose critical judgment of the Vietnam war led them to resist military service. This testimony today in favor of amnesty is rooted in prior evaluations which the American Catholic bishops have made about these young people. In 1968 the bishops offered the following assessment of those who oppose military service:

> There is sometimes ground for question as to whether the attitudes of some toward military duty do not spring from cowardice. In this problem, as in all crises which test generosity and heroism, cases of moral as well as physical cowardice doubtless occur. But a blanket charge of this kind would be unfair to those young people who are clearly willing to suffer social

ostracism and even prison terms because of their opposition to a particular war. One must conclude that for many of our youthful protesters, the motives spring honestly from a principled opposition to a given war as pointless or immoral.

Nor can it be said that such conscientious objection to war, as war is waged in our times, is entirely the result of subjective considerations and without reference to the message of the Gospel and the teaching of the Church; quite the contrary, frequently conscientious dissent reflects the influence of the principles which inform modern papal teaching, the Pastoral Constitution [of the Second Vatican Council] and a classical tradition of moral doctrine in the Church, including, in fact, the norms for the moral evaluation of a theoretically just war. ("Human Life in Our Day," chapter 2, "The Family of Nations," November 1968.)

The purpose of recalling these words is to focus our concern today on those who have suffered prison terms and social ostracism, even to the point of self-imposed exile, as a result of their opposition to the Vietnam war. It is our belief that in the present context of our country the granting of amnesty is a work of reconciliation. It is important to specify what we mean by amnesty; to grant amnesty requires both an understanding of its precise meaning and a recognition of how it relates to reconciliation.

Amnesty does not mean that society or the nation "forgives" a person for his unlawful acts. Rather, amnesty is a healing act of deliberate and selective "forgetting," used in situations where the nation both admits its own need for reconciliation and recognizes that need for healing of injustices suffered by the individuals in question. To grant amnesty, then, brings about healing and reconciliation to some divided members of society and reconciliation of these members with society as a whole. The government's grant of amnesty becomes the law's own way of undoing what the law itself has done.

Who should be granted amnesty? Three broad categories of cases become evident. First, those young men who were subject to the draft but whose informed conscience led them to oppose participation in the Vietnam war, even though they could not say in conscience that they were opposed to all use of military force. These selective conscientious objectors are now serving prison terms. We do not believe any useful purpose is served at this time by continuing the incarceration in federal prisons of these young men whose consciences instructed them not to engage in the killing and dying in the Vietnam war. Therefore for this first group I would repeat the injunction of the American Catholic bishops made in 1971:

> We urge civil officials . . . to consider granting amnesty to those who have been imprisoned as selective conscientious objectors. ("Declaration on Conscientious Objection and Selective Conscientious Objectors," October 21, 1971.)

Secondly, we also recognize that an additional group of young men are in a somewhat similar position, that is, men in military service, who for reasons of their consciences were compelled to refuse to serve in the war and who were imprisoned or given less than honorable discharges. Here again the complicating impact of selective conscientious objection upon the structures of military law is evident. However, we do not believe that the individual forfeits his right to exercise the dictates of his conscience once he enters the ranks of the military, or, for that matter, any other form of employment. The request for amnesty for selective conscientious objectors in federal prisons, therefore, should also be extended similarly to men in military jails.

Thirdly, there is the group of young men who have left the country or who have remained in the country as fugitives from the law because they felt compelled to follow their consciences rather than the law. Certainly their experiences of sufferings and separations have been trying for them personally as well as for their families and friends. We again urge officials and all Americans to respond to their conspicuous need to find a solution to the problems of these men through the reconciling work of amnesty.

Why should amnesty be granted to these men? I have already cited one reason: the political and spiritual need to deal with the divisions in the fabric of our national life. There is, however, also a second reason of the moral or jurisprudential order. All three of the categories cited are made up of men who held the position of conscientious objection to a particular war, that is, selective conscientious objection. Catholic teaching on the morality of warfare fully supports those who with informed conscience oppose participation in all forms of warfare.

The dominant moral position in the Catholic community for several centuries, however, has been the moral doctrine of the just war. This position while legitamating the use of force against injustice in political affairs as the *ultima ratio*, refuses to condone any and all uses of forces. Such a teaching, requiring the individual to exercise responsible discriminating judgment about the moral validity of each use of force, is the matrix from which the judgment of *selective* conscientious objection issues.

Because selective conscientious objection is so explicitly a product of a Catholic moral doctrine, the American bishops expressed their concern in 1968 about the inadequacy, indeed the injustice, of the failure of our legal system to provide for this very sound moral posture.

> The present laws of this country, however, provide only for those whose reasons of conscience are grounded in a total rejection of the use of military force. This form of conscientious objection deserves the legal provision made for it, but we consider that the time has come to urge that similar consideration be given those whose reasons of conscientious objection are more personal and specific. ("Human Life in Our Day," chapter 2, "The Family of Nations," November 1968.)

This testimony today is motivated by the fact that because of the inadequacy of the civil law a number of individuals suffered and are still suffering imprisonment, or have left the country and are still in voluntary exile, or have taken refuge from the law, because they felt compelled to follow their consciences rather than the law. The failure of the law to provide for the selective conscientious objector position impelled the bishops in 1968 to recommend that it be revised by enacting "a modification of the Selective Service Act, making it possible, although not easy, for so-called selective conscience objectors to refuse—without fear of imprisonment or loss of citizenship—to serve in wars which they consider unjust, or in branches of the services (e.g., the Strategic Nuclear Forces) which would subject them to the performance of actions contrary to deeply held moral convictions about indiscriminate killing." (Ibid.)

In taking this position there is no attempt to underestimate the difficulties of the jurisprudential problem involved here for legislators in seeking to construct a law which respects both demands of public order and the dictates of an informed conscience protesting the character of a specific instance of warfare. Rather, the intention is to highlight the notion that where the imperatives of the moral law contradict the demands of he civil law in a properly formed conscience, in Caholic teaching the moral order must take precedence. This primacy of the informed conscience was the basis of the following counsel offered by the American bishops in 1968:

> Whether or not such modifications in our laws are, in fact, made we continue to hope that in the all-important issue of war and peace, all men will follow their consciences. We can do no better than to recall, as did the Second Vatican Council, "the permanent binding force of the universal natural law and its all embracing principles," to which "man's conscience itself gives ever more emphatic voice." (Ibid.)

In 1971 the bishops specified their support of selective conscientious objection:

> In the light of the gospel and from an analysis of the Church's teaching on conscience, it is clear that a Catholic can be a conscientious objector to war in general or to *a particular war* because of religious training and belief. (italics added) ("Declaration on Conscientious Objection and Selective Conscientious Objection," October 21, 1971)

On three occasions ("The Catholic Conscientious Objector," October, 1969; "Military Conscription," March, 1971; "Declaration on Conscientious Objection and Selective Conscientious Objection," October, 1971) the United States Catholic Conference reiterated the bishops' original recommendation in 1968 for a change in the Selective Service legislation affecting selective conscientious objectors. However, in fact, the law was not changed. During this period two cases were appealed to the Supreme Court involving selective conscientious objectors. The young men involved had refused to participate specifically in the Vietnam war on grounds of conscience although neither of them was conscientiously opposed to war in general. The Court upheld the convictions considering the present draft law constitutional, even though it did not provide an exemption for those who object in conscience to a particular war. However, the Court expressly stated in its majority opinion that Congressional action to recognize the right of selective conscientious objection could also be constitutional.

Obviously, in the view expressed in these statements we still have an unfinished jurisprudential agenda in our country on the issue of selective conscientious objection. The purpose of this testimony today is not to discuss this question in detail, but to illustrate that support for amnesty is rooted in the moral judgment that the problems of many of the young men in voluntary exile or those who are underground or those in prison were caused by the sensitivity of their consciences to the war and the insensitivity of our civil law to their conscience.

What should be our response as a nation to this situation? I would offer three reflections. First, I think it is clear that the nation's need for reconcilation is ill-served by offering these men full citizenship only on the condition that they first serve prison terms for violating a seriously inadequate law. To cause them to suffer imprisonment after the suffering and anguish they have already experienced seems a harsh and vindictive act for a nation seeking to be an agent of healing and reconcilation.

Secondly, as one guideline for determining the form amnesty should take, I would repeat the pastoral concern expressed by the Catholic bishops of America in 1971, that "civil authorities grant general pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open *in principle* to some form of service to the community. (Italics added) ("Resolution on Southeast Asia," November 1971.)

In principle, one of the objectives of the nation is to protect individual rights. In practice, the nation's laws and their enforcement are not always consonant with that principle.

In principle, persons have rights and duties as citizens of the nation. In practice, these rights and duties are often imperfectly fulfilled. Such a catastrophic experience as the Vietnam war placed a tremendous strain on the delicate network of relationship between the nation and citizens, and upon the rights and duties of each. While the requirement in principle of alternative service is both a possible and reasonable requirement as a condition of amnesty and one which still commands our consideration, I would wish to stress today that it is not the only way, nor perhaps even the best way at the moment to promote reconciliation or to resolve this residual moral dilemma of the Vietnam war. I submit that the requirement of quid pro quo, in the present case, may be more than either reason or reconciliation require.

In any case we need to keep before us the preeminent need of these trying times: motivated by a spirit of reconciliation, the nation must surely find a way in principle and in practice to integrate these men back into society. This process requires that both parties in principle and in practice show a great spirit of generosity, and accept the weaknesses of the other party, that is, on the one hand, the nation's failure to design appropriate legislation, and on the other, the individual's failure to find a way of objecting to the war more acceptable to the total community. Faced by the urgency of the challenge, a display of generosity in this degree represents the best of the American tradition and should characterize the attitude of the government, the citizens at large and the individual directly affected. In this way we can get on with the tasks of reconciliation and healing so urgently needed in our country at this time.

[The documents referred to at p. 172 follow:]

Declaration on Conscientious Objection and Selective Conscientious Objection

UNITED STATES CATHOLIC CONFERENCE

October 21, 1971

FOR many of our Catholic people, especially the young, the question of participation in military service has become a serious moral problem. They properly look to their spiritual leaders for guidance in this area of moral decision and for support when they judge their sentiments to be in keeping with Catholic Christian tradition. For this reason, we wish to express ourselves on the following principles.

The traditional teaching of the Church regarding the importance of individual conscience is crucial in this issue of conscientious objection and selective conscientious objection. The obligation to seek the truth in order to form right and true judgments of conscience and the obligation to follow conscience was put in positive terms by Pope Paul VI and the Fathers at the Second Vatican Council:

> Further light is shed on the subject if one considers that the highest norm of human life is the divine law—eternal, objective, and universal—whereby God orders, directs, and governs the entire universe and all the ways of the human community, by a plan conceived in wisdom and love. Man has been made by God to participate in this law, with the result that, under the gentle disposition of divine Providence, he can come to perceive ever increasingly the unchanging truth. Hence every man has the duty, and therefore the right, to seek the truth in matters religious, in order that he may with prudence form for himself right and true judgments of conscience, with the use of all suitable means.
>
> Truth, however, is to be sought after in a manner proper to the dignity of the human person and his social nature. The inquiry is to be free, carried on with the aid of teaching or instruction, communication, and dialogue. In the course of these, men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth. Moreover, as the truth is discovered, it is by a personal assent that men are to adhere to it.

> On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience faithfully, in order that he may come to God, for whom he was created. ("Declaration on Religious Freedom," n.3)

Addressing the question in the "Pastoral Constitution on the Church in the Modern World," Our Holy Father and the Bishops at the Second Vatican Council wrote:

> In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged.
>
> Conscience is the most secret core and sanctuary of a man. There he is alone with God, whose voice echoes in his depths. In a wonderful way conscience reveals that law which is fulfilled by love of God and neighbor. In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals and from social relationships.
>
> Hence the more that a correct conscience holds sway, the more persons and groups turn aside from blind choice and strive to be guided by objective norms of morality. ("The Church in the Modern World," n. 16)

In addition, the Church has always affirmed the obligation of individuals to contribute to the common good and the general welfare of the larger community. This is the basis for the participation of Christians in the legitimate defense of their nation.

The Council Fathers, recognizing the absence of adequate authority at the international level to resolve all disputes among nations, acknowledged that "governments cannot be denied the right to legitimate defense once every means of peaceful settlement has been exhausted." ("The Church in the Modern World," n. 79)

When survival of the wider community has been threatened by external force, the Church has traditionally upheld the obligation of Christians to serve in military defensive forces. Such community-oriented service, that is, soldiers devoted to the authentic purposes of securing peace and justice, has merited the Church's commendation.

The Catholic Bishops of the United States are gratefully conscious of the sacrifices and valor of those men who are serving and who have served in the armed forces and especially those who have given their lives in service to their country. Their courage in the defense of the common good must not be underestimated or forgotten. In the words of the Second Vatican Council, "As long as they (members of the armed forces) fulfill this role properly, they are making a genuine contribution to the establishment of peace." ("The Church in the Modern World," n. 79)

It was also recognized by the Second Vatican Council that the common good is also served by the conscientious choice of those who renounce violence and war, choosing the means of nonviolence instead:

> . . . we cannot fail to praise those who renounce the use of violence in the vindication of their rights and who resort to methods of defense which are otherwise available to weaker parties too, provided that this can be done without injury to the rights and duties of others or of the community itself. ("The Church in the Modern World," n. 78)

Furthermore, the Council Fathers, addressing themselves more specifically to the rights of the conscientious objector to war, stated:

> . . . it seems right that laws make humane provisions for those who for reasons of conscience refuse to bear arms, provided how-

ever, that they accept some other form of service to the human community. ("The Church in the Modern World," n. 79)

Although a Catholic may take advantage of the law providing exemption from military service because of conscientious opposition to all war, there often arises a practical problem at the local level when those who exercise civil authority are of the opinion that a Catholic cannot under any circumstances be a conscientious objector because of religious training and belief. This confusion, in some cases, is the result of a mistaken notion that a person cannot be a conscientious objector unless the individual is a member of one of the traditional pacifist churches (for example, a Quaker).

In the light of the Gospel and from an analysis of the Church's teaching on conscience, it is clear that a Catholic can be a conscientious objector to war in general or to a particular war "because of religious training and belief." It is not enough, however, simply to declare that a Catholic can be a conscientious objector or a selective conscientious objector. Efforts must be made to help Catholics form a correct conscience in the matter, to discuss with them the duties of citizenship, and to provide them with adequate draft counseling and information services in order to give them the full advantage of the law protecting their rights. Catholic organizations which could qualify as alternative service agencies should be encouraged to support and provide meaningful employment for the conscientious objector. As we hold individuals in high esteem who conscientiously serve in the armed forces, so also we should regard conscientious objection and selective conscientious objection as positive indicators within the Church of a sound moral awareness and respect for human life.

The status of the selective conscientious objector is complicated by the fact that the present law does not provide an exemption for this type of conscientious objection. We recognize the very complex procedural problems which selective conscientious objection poses for the civil community; we call upon moralists, lawyers and civil servants to work cooperatively toward a policy which can reconcile the demands of the moral and civic order concerning this issue. We reaffirm the recommendation on this subject contained in our November 1968 pastoral letter, "Human Life in Our Day":

1) a modification of the Selective Service Act making it possible for selective conscientious objectors to refuse to serve in wars they consider unjust, without fear of imprisonment or loss of citizenship, provided they perform some other service to the human community; and

2) an end to peacetime conscription.

In restating these recommendations, we are aware that a number of young men have left the country or have been imprisoned because of their opposition to compulsory military conscription. It is possible that in some cases this was done for unworthy motives, but in general we must presume sincere objections of conscience, especially on the part of those ready to suffer for their convictions. Since we have a pastoral concern for their welfare, we urge civil officials in revising the law to consider granting amnesty to those who have been imprisoned as selective conscientious objectors, and giving those who have emigrated an opportunity to return to the country to show responsibility for their conduct and to be ready to serve in other ways to show that they are sincere objectors.



1971
Publications Office
UNITED STATES CATHOLIC CONFERENCE
1312 Massachusetts Avenue N.W.
Washington, D.C. 20005

31-658 O - 74 - 13

Statement on

The Catholic Conscientious Objector

October 15, 1969

SINCE Apostolic times, the Church has cherished and valued the spirit of non-violence based on the teaching of Jesus. This is one of the reasons Christians of the early Church did not participate in military service. There was even a strong tendency toward pacifism. The Church Fathers, St. Ambrose and St. Augustine, emphasized the primacy of love, going so far as to state that Christians as individuals had no right to self-defense. Christians, however, were allowed to take part in communal defense if the war was considered just.

THE theory of the just war, beginning with St. Augustine and later developed by Catholic theologians such as St. Thomas Aquinas and Francis Suarez, required that certain conditions be met: The war must be declared only as a last resort by a lawful authority, for a just cause, using just means, and with reasonable expectation of success. The military action cannot produce a greater evil than it seeks to correct. In applying an evolving just war theory to the contemporary world, the person who is sincerely trying to form his conscience must judge whether or not the end achieved by a particular war or all-out war is proportionate, in any degree, to the devastation wrought by that war. On the basis of this judgment, he would justify either participation in or abstention from war.

IN abstaining, some might conclude that just war in the modern world is not possible, citing Pope John's statement in Pacem in Terris: "Therefore, in this age of ours which prides itself on its atomic power, it is irrational to believe that war is still an apt means of vindicating violated rights." (n. 127) "No more war, war never again," were the words of Pope Paul VI to the General Assembly of the United Nations.

IN the continuing condemnation of total warfare by recent popes, the Second Vatican Council declared that —

> every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man which merits firm and unequivocal condemnation. (Gaudium et Spes, n. 80)

A Catholic viewing his tradition, the message of the Gospel statements, could validly question and abstain from participation in war or the preparations for war.

THE Second Vatican Council, therefore, endorsed laws that would —

> make human provision for the care of those who for reasons of conscience refuse to bear arms, provided, however, that they accept some other form of service to the human community. (GS, n. 79)

FROM the previously stated documents and traditions, it is clear that a Catholic (either in-service or out-of-service) can be a conscientious objector "because of religious training and belief."

We are, therefore, concerned when we hear that some boards and military tribunals do not recognize a Catholic claim for military exemption by reason of conscience. On the other hand, we are encouraged by recent court decisions and the actions of draft boards which uphold the primacy of conscience in this regard.

BUT it is not enough merely to declare that a Catholic can be a conscientious objector. Christians must "make humane provisions" for the conscientious objector and aid him in his "service to the human community." What he often lacks is basic information about the draft and its alternatives. He meets opposition from those who should, in fact, be counseling and aiding him. Once granted the status of a conscientious objector, he often finds himself in a menial and degrading alternative service in order to "test his sincerity." We therefore recommend:

1. *That each diocese initiate or cooperate in providing draft information and counseling;*
2. *That Catholic Organizations which could qualify as alternative service agencies consider applying for that status, and support and provide meaningful employment for the concientous objector.*

WE are not only concerned about the status of the conscientious objector, but also concerned about that of the Selective Conscientious Objector. His status is complicated by the fact that his claim for exemption is not upheld by law. The American bishops spoke at some length in their pastoral letter of November, 1968, Human Life in Our Day, of the Selective Conscientious Objector, recommending —

> a modification of the Selective Service Act making it possible, although not easy, for so-called selective conscientious objectors to refuse—without fear of imprisonment or loss of citizenship — to serve in wars which they consider unjust or in branches of service (e.g., the strategic nuclear forces) which would subject them to the performance of actions contrary to deeply held moral convictions about indiscriminate killing.

IN reaffirming this recommendation, we are reminded of the number of individuals who have suffered imprisonment or have left the country because they felt compelled to follow their conscience rather than the law. In a continuing pastoral concern for their welfare, we urge civil officials, as part of a revision of the law as regards to the Selective Conscientious Objector, to consider granting amnesty to those who have suffered imprisonment and give those who have left the country an opportunity to demonstrate that they are sincere objectors.

IN conclusion, we encourage clergy and laymen alike, especially parents, to be sympathetic and understanding to those who in good conscience are compelled to object to military service, even if one were not in total agreement with the objector. The Fathers of the Second Vatican Council wrote —

> We cannot fail to praise those who renounce the use of violence in the vindication of their rights and who resort to methods of defense which are otherwise available to weaker parties, provided that this can be done without injury to the rights and duties of others or of the community itself. (GS, n. 78)

WE should look upon conscientious objection not as a scandal, but rather as a healthy sign. War will still not be replaced by more humane institutions for regulating conflict until citizens insist on principles of non-violence. John F. Kennedy once said, "War will exist until the distant day when the conscientious objector enjoys the same reputation and prestige as the warrior does today."

Division of World Justice and Peace
United States Catholic Conference
October 15, 1969

Resolution on Imperatives of Peace

November 16, 1972

NATIONAL CONFERENCE OF CATHOLIC BISHOPS

This is a critical moment in the history of the Vietnam war. Intensive efforts on the part of our government as well as other parties involved appear to be refining the final details of a settlement which will end the fighting. Recalling our exhortation a year ago to our nation's leaders and to leaders of all nations to "bring the war to an end with no further delay," we pray earnestly to Christ, the Prince of Peace, for a successful outcome of the present negotiations: that is, for a just and lasting peace with stability and freedom for all the nations and peoples of Southeast Asia. We couple this prayer with a plea to both sides for an end to bombing and terrorism which are causing such loss of civilian life and destruction of the land itself. Indeed, a particularly anguishing and, in many cases, immoral aspect of this war has been the suffering and death inflicted on non-combatants.

It is vitally important that Americans now turn their attention to the task of reconciliation not only in Southeast Asia but also in our country. This war can well leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve our differences in a spirit of mutual understanding and respect.

Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spiritual. Our returning veterans and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. Our sincere compassion should be extended to the families of men killed in the fighting. The dead, the maimed, and the missing in action should have constant remembrance in our prayers. Those who continue to serve in the military should also receive the moral and material support of the nation.

In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious

belief, refused to participate in the war. A year ago, we urged "that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community." *(Resolution on Southeast Asia, National Conference of Catholic Bishops,* November, 1971). We again urge government officials and all Americans to respond in this spirit to the conspicuous need to find a solution to the problems of these men. Generosity represents the best of the American tradition and should characterize our response to this urgent challenge.

Generosity must also mark our participation in efforts to rebuild the war-torn nations and societies of Southeast Asia. There can be no doubt that the people of North and South Vietnam, Laos and Cambodia have suffered a tragedy far greater than ours. The dramatic and successful programs of aid and reconstruction carried out by the United States following World War II provide a model for what is demanded of us now. We must be unstinting in the expending of our moral, material and technical resources and skills on behalf of the people of Southeast Asia who have suffered so grievously.

Finally, we believe that the imperatives of peace now demand intensive study of many complex and pressing moral issues. The return of peace should not cause a slackening of attention to these matters. The experience of recent years amply illustrates the fact that grave ethical and moral questions regarding warfare remain unresolved. While recognizing the right of self-defense, we are nevertheless convinced that war is not an apt means of settling disputes. The quest for viable means of preventing war and for effective alternative methods of resolving conflicts—through such agencies as the United Nations—is an urgent imperative. Technological skill in the science of war must not outstrip humane skill in the arts of peace. Church agencies, including the United States Catholic Conference, Catholic educational institutions, diocesan offices for justice and peace and organizations of the laity should in the months and years to come take a leading role in the effort to work for international justice and to find ways to ensure that peace—which, God willing, is returning to Southeast Asia and also to the United States—will be the permanent condition of human life in all nations and for all time.



1972
Publications Office
UNITED STATES CATHOLIC CONFERENCE
1312 Massachusetts Avenue N.W.
Washington, D.C. 20005

Resolution
on
SOUTHEAST ASIA

November, 1971

National Conference
of
Catholic Bishops

RESOLUTION ON SOUTHEAST ASIA

In the light of the urgent appeal for justice in the world pronounced by the recent Synod in Rome, we Bishops of the United States address ourselves again to the agonizing issue of the American involvement in Southeast Asia. And we feel compelled to make some positive recommendations concerning the long journey ahead to peace with justice in our world.

I. THE AMERICAN INVOLVEMENT IN SOUTHEAST ASIA

Three years ago, in our Pastoral Letter "Human Life in Our Day," we raised some basic moral questions concerning the Vietnam War:

> In assessing our country's involvement in Vietnam we must ask: Have we already reached, or passed, the point where the principle of proportionality becomes decisive? How much more of our resources of men and money should we commit to this struggle, assuming an acceptable cause and intention? Has the conflict in Vietnam provoked inhuman dimensions of suffering?

At this point in history it seems clear to us that whatever good we hope to achieve through continued involvement in this war is now outweighed by the destruction of human life and of moral values which it inflicts. It is our firm conviction, therefore, that the speedy ending of this war is a moral imperative of the highest priority. Hence, we feel a moral obligation to appeal urgently to our nation's leaders and indeed to the leaders of all the nations involved in this tragic conflict to bring the war to an end with no further delay.

II. THE JOURNEY AHEAD TO PEACE WITH JUSTICE IN OUR WORLD

It is our prayerful hope that we in America will have learned from the tragedy of Vietnam important lessons for reconstructing a world with justice and a world at peace.

First, we must be determined as never before "to undertake an evaluation of war with an entirely new

attitude" (Vatican II, Pastoral Constitution on the Church in the World, No. 80). And we reach this new attitude by attending more carefully to the spirit of the Gospel and by heeding the pleas of recent Popes: "Nothing is lost by peace; everything may be lost by war" (Pius XII, Radio Broadcast of 24 August 1939); "In this age of ours which prides itself on atomic power, it is irrational to believe that war is still an apt means of vindicating violated rights" (John XXIII, Pacem in Terris, No. 127); "No more war, war never again" (Paul VI, Address to the United Nations, 4 October 1965).

Secondly, we realize that "peace is not merely the absence of war, but an enterprise of justice" (Vatican II, Past. Const. on the Church in the World, No. 78). In this vein we recognize our nation's moral obligation, together with other nations, to contribute mightily to the restoration and development of Southeast Asia. After World War II our Country launched an unprecedented program of economic assistance and social reconstruction of war-torn countries. Certainly we can do no less now.

Thirdly, we are convinced that the United Nations must become more effective in the promotion of world justice and peace. In saying this, we echo the words of Pope Paul VI that "the people of the earth turn to the United Nations as the last hope of concord and peace," and we recognize with the Holy Father that the United Nations "must be perfected and made equal to the needs which world history will present" (Address to the United Nations, 4 October 1965). Only by strengthening the United Nations as an international forum for peace and as a multi-lateral instrument for peace-keeping can future Vietnams be averted.

Finally, we recognize a clear need at this point in history to urge upon all Americans a spirit of forgiveness and reconciliation. We recall that at a similarly critical moment in American history, Abraham Lincoln urged his countrymen to act "with malice towards none, with charity towards all." We invite our fellow Americans to let these words guide new efforts to heal wounds in our divided society and to unite our country in the years after the war in Southeast Asia.

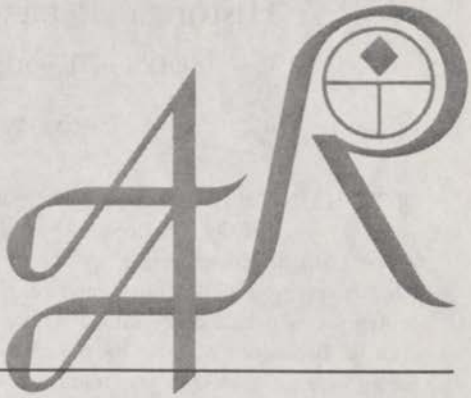
We speak with special concern for those who have borne the heaviest burden of this war: the young men who chose conscientiously to serve in the Armed Forces, many of whom lost life or limb in this conflict. We wish to express our profound sympathy to the wives and families of the soldiers who have died in Southeast Asia. We express our profound concern for our prisoners of war and their families and promise our prayers for the prisoners' welfare and release. And on behalf of the returning veterans we urge strongly that the Government increase the present benefits and educational opportunities afforded by the G.I. Bill, and that it create new programs of drug rehabilitation, vocational training and job placement wherever necessary.

Those who in good conscience resisted this war are also subjects of our genuine pastoral concern. They too must be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation. Hence we repeat our plea of October 21, 1971 that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community. Surely a country which showed compassion by offering amnesty after the Civil War will want to exercise no less compassion today.

CONCLUSION

In setting forth our position at this time, we realize that the task of constructing a just social order and a world genuinely at peace will never be an easy one. But we must reaffirm that followers of Christ and all men of good will must redouble their efforts to achieve this task so worthy of our best efforts.

> Otherwise, for all its marvelous knowledge, humanity, which is already in the middle of a grave crisis, will perhaps be brought to that mournful hour in which it will experience no peace other than the dreadful peace of death. But while we say this, the Church of Christ takes her stand in the midst of the anxiety of this age, and does not cease to hope with the utmost confidence. She intends to propose to our age over and over again, in season and out of season this apostolic message: "Behold, now is the acceptable time" for a change of heart; "Behold, now is the day of salvation!" (Vatican II, Pastoral Constitution on the Church in the World, No. 82).



A REPRINT FROM

JOURNAL OF THE
AMERICAN
ACADEMY OF
RELIGION

JUNE, 1973

VOLUME XLI NUMBER TWO

31-658 O - 74 - 14

A Historical Perspective on Selective Conscientious Objection

LeRoy Walters

DURING the past six years the question of selective conscientious objection (SCO) has been addressed by a National Advisory Commission on Selective Service, by the Supreme Court, and by numerous legal scholars, political philosophers, and religious ethicists. For the most part, the contemporary debate concerning SCO has been carried on without explicit reference to discussions of SCO by the classic just-war theorists.[1] The few documents which cite the just-war tradition have arrived at apparently contradictory conclusions.

[1] The following are among the most important recent analyses of the SCO question (documents are listed in chronological order by year and in alphabetical order within each year): *In Pursuit of Equity: Who Serves When Not All Serve?* Report of the National Advisory Commission on Selective Service (Washington, D.C.: U.S. Government Printing Office, 1967), esp. pp. 48-51; James Finn, ed., *A Conflict of Loyalties: The Case for Selective Conscientious Objection* (New York: Pegasus, 1968); Edward LeRoy Long, Jr., *War and Conscience in America* (Philadelphia: Westminster Press, 1968), pp. 106-120; William V. O'Brien, "Selective Conscientious Objection and International Law," *Georgetown Law Journal* 56 (June, 1968), 1080-1131; Ralph Potter, "Conscientious Objection to Particular Wars," in *Religion and the Public Order*, No. 4, edited by Donald A. Giannella (Ithaca, N.Y.: Cornell University Press, 1968), pp. 44-99; Paul Ramsey, "Selective Conscientious Objection," in *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1970), pp. 91-137; Michael Walzer, "Conscientious Objection," in *Obligation: Essays on Disobedience, War and Citizenship* (Cambridge, Mass.: Harvard University Press, 1970), pp. 120-145; Kent Greenawalt, "All or Nothing at All: The Defeat of Selective Conscientious Objection," in *The Supreme Court Review: 1971*, edited by Philip B. Kurland (Chicago: University of Chicago Press, 1971), pp. 31-94; John A. Rohr, *Prophets Without Honor: Public Policy and the Selective Conscientious Objector*, Studies in Christian Ethics (Nashville: Abingdon Press, 1971); U.S. Supreme Court, *Gillette v. United States* and *Negre v. Larsen et al., U.S.* [*Supreme Court*] *Reports* 401 (October Term, 1970), 437-475 (case decided March 8, 1971); David Malament, "Selective Conscientious Objection and the *Gillette* Decision," *Philosophy and Public Affairs*, I (Summer, 1972), 362-386. For further bibliography see Rohr, *Prophets*, pp. 185-188. While many of the documents listed above refer to the just-war tradition in general terms, discussion of the theorists' views on the specific issue of SCO occurs only in the writings of Long, Rohr, and Malament, and in Justice Douglas's dissent from the majority decision in *Negre v. Larsen*.

LeRoy Walters (Ph.D., Yale) is Director of the Center for Bioethics at Georgetown University's Kennedy Institute for the Study of Human Reproduction and Bioethics. This article is based on a paper presented to the AAR Ethics Section at the International Congress of Learned Societies in the Field of Religion, Los Angeles, September 5, 1972.

Perhaps the most striking instance of divergence in interpreting the tradition occurred in 1971. John Rohr, in his important study entitled *Prophets Without Honor,* advanced the thesis that, according to the Catholic just-war tradition, conscientious objection to a particular war is seldom a moral obligation.[2] On the other hand, Supreme Court Justice William O. Douglas appealed to the tradition in support of a somewhat different view. Basing his position on a brief prepared by John Noonan and colleagues,[3] Justice Douglas dissented from the majority opinion in the SCO-case *Negre v. Larsen,* arguing that, according to Vitoria and other authorities, "a Catholic has a moral duty not to participate in unjust wars."[4]

The aim of this essay is to survey in systematic fashion the views of the classic just-war theorists concerning SCO. Such an overview will serve to supplement present-oriented discussions of SCO by providing a historical perspective. It may also help to explain seeming contradictions in the interpretation of the just-war tradition.

The essay itself is divided into three parts, which correspond to three major questions discussed by the classic just-war theorists themselves:

1. What is the citizen's presumptive duty, to obey a summons to participate in warfare or to abstain from participation?
2. Under what circumstances, if any, is SCO morally justified?
3. Should governments make legal provision for conscientious objectors to particular wars?

Two clarifications are in order before we examine the first of these three questions. The theorists chosen for inclusion in the survey have been selected on the basis of two criteria: (1) they are regarded by historians of international law and the just-war tradition as the most representative, creative, and influential just-war theorists; and (2) their writings explicitly discuss the question of SCO. On the basis of the first criterion, the large number of theorists in the western tradition can be limited to approximately eight: Cicero, Augustine, Gratian, Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius.[5] The second criterion excludes Cicero and suggests major concentration on the writings of Vitoria, Suárez, and Grotius, who analyzed the SCO issue most extensively and systematically.

[2] Rohr, *Prophets*, pp. 109-123.

[3] Richard Harrington; Leigh Athearn; Stuart J. Land; and John T. Noonan, Jr., *Negre v. Larsen: Reply Brief on Behalf of Petitioner* (Supreme Court, October Term, 1970, No. 325).

[4] *Gillette v. United States, U.S.* [*Supreme Court*] *Reports 401* (October Term, 1970) 470-471.

[5] For evidence on this point see Robert Regout, *La doctrine de la guerre juste . . .* (Paris: A. Pedone, 1934), pp. 79-93, 152-185, 194-230, and 274-278; Joachim von Elbe, "The Evolution of the Just War in International Law," *American Journal of International Law* 33 (1939), 667-669, 674-680; and Arthur Nussbaum, *A Concise History of the Law of Nations*, revised edition (New York: Macmillan, 1953), pp. 10-16, 79-114.

The second preliminary clarification concerns the precise purpose of the essay. In intention at least, the present study concentrates on historical rather than normative ethics. It seeks to examine and compare the views and arguments of several ancient experts, all of whom understood themselves to be within the just-war tradition. A historical gulf separates us from even the most recent of these theorists, Hugo Grotius, who died in 1645. If one recalls that the musket and improved cannons were the ultimate weapons in Grotius' day, that most seventeenth-century soldiers were either professionals or mercenaries, and that the prevalent pre-modern form of government was monarchical, one begins to sense the depth of that gulf.[6] This historical distance does not render the views of the classic theorists either invalid or irrelevant. It does suggest, however, that any effort to apply their thought concerning SCO to twentieth-century ethical decision-making must take into account a rather significant hermeneutical problem.

The Citizen's Presumptive Duty

The first question asked by most just-war theorists was *whether* resort to war is ever morally justified. Phrased in the most general terms, their answer was: The prince is permitted to resort to war only as a last resort, after all non-military means of settling a dispute have been tried and have failed. In other words, the prince's *prima facie* duty was to abstain from war.[7]

One might expect the theorists to have argued, analogously, that the presumptive duty of the subject or common citizen was to avoid military action. Generally speaking, however, they did not so argue. In the opinion of most just-war theorists, the prince's decision to wage war carried sufficient moral weight to reverse the presumption. Thus the majority view was that if the prince called to arms, the subject's *prima facie* duty was to obey and participate in warfare. In short, the burden of proof lay with the selective objector.[8]

[6] For an attempt to reconstruct the historical setting of sixteenth- and seventeenth-century just-war thought see LeRoy Brandt Walters, Jr., "Five Classic Just-War Theories: A Study in the Thought of Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius" (Ph.D. dissertation, Yale University, 1971) pp. 205-213, 219-269.

[7] Thomas Aquinas, *Summa theologiae* (ST), II-II, 40, 1, objections and answer; Francisco de Vitoria, *De jure belli* (DJB), prolog, 1, and 60; Francisco Suárez, "*De bello*" (DB), I, 1; IV, 1, 5, and 7 (the disputation "On War" is part of the treatise on charity in the work entitled *The Three Theological Virtues*); Alberico Gentili, *De jure belli* (DJB), I, 5 (pp. 27-30); I, 13 (p. 58); I, 17 (p. 79); and Hugo Grotius, *De jure belli ac pacis* (JBP), I, 2, 1-9; II, 24, 8-10. Unless otherwise noted, all citations from the writings of Vitoria, Suárez, Gentili, and Grotius refer to the Classics of International Law (CIL) translations of their works. The CIL volume on Suárez bears the title *Selections from Three Works*.

[8] See, for example, Vitoria, DJB, 25, 31; Suárez, DB, VI, 8-9. The late John Courtney Murray reasserted this majority view in his essay "War and Conscience," in *A Conflict of Loyalties*, pp. 26-27; see also Paul Ramsey, "Can a Pacifist Tell a Just War?" *Just War*, pp. 274-275.

The theoretical foundations for the majority position were laid by Augustine and Thomas Aquinas. In his work *Contra Faustum* Augustine had written:

> A just man, even if he fights under a sacreligious king, can lawfully fight when the king commands it—as serving the order of peace—if it is certain that what he is commanded to do is not opposed to the precept of God or if it is not certain whether or not it is opposed to the divine precept. Thus the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent.[9]

This quotation from Augustine found its way into the canon law in the twelfth century and exerted a significant influence on the subsequent just-war tradition.[10]

Although Thomas Aquinas did not explicitly discuss the question of conscientious objection to warfare, he did turn critical attention to an analogous life-and-death issue, namely, the dilemma of an executioner who is ordered by a judge to kill an innocent man.

> He that carries out the sentence of the judge who has condemned an innocent man, if the sentence contains an inexcusable error, he should not obey, else there would be an excuse for the executions of the martyrs: if however it contains no manifest injustice, he does not sin by carrying out the sentence, because he has no right to discuss the judgment of his superior; nor is it he who slays the innocent man, but the judge whose minister he is.[11]

Thomas's example was also cited frequently by later just-war theorists.[12]

Two sixteenth-century Spanish moral theologians, Vitoria and Suárez, most clearly articulated the majority position on the citizen's presumptive duty. In the first place, they argued that the subject had no moral obligation to investigate the cause of a war; rather, he could participate in good conscience provided that the war was not clearly unjust.[13] Vitoria, in fact, distinguished various degrees in the responsibility-to-know. He clearly asserted the duty of the prince, senators, petty rulers, and members of the royal council to examine carefully the alleged grounds for going to war. With typical candor Vitoria explained why ordinary subjects did not share in the same responsibility:

[9] *Contra Faustum*, 22, 75; cited by Gratian in the *Decretum*, Pt. II, C. 23, qu. 1, c. 4 (Friedberg edition, I, col. 893; author's translation).

[10] Frederick Hooker Russell, "The Medieval Theories of the Just War according to the Romanists and Canonists of the Twelfth and Thirteenth Centuries" (Ph.D. dissertation, Johns Hopkins University, 1969), pp. 211, 277, and 340, n. 61; Vitoria, DJB, 31; Suárez, VI, 8; Gentili, DJB, I, 25 (p. 125); and Grotius, JBP, II, 26, 4, 3.

[11] ST, II-II, 64, 6, ad 3 (Dominican Fathers' translation).

[12] See, for example, Vitoria, DJB, 22 and 31; Suárez, DB, VI, 8; and Grotius, JBP, II, 26, 4, 9.

[13] Vitoria, DJB, 22 and 25; Suárez, DB, VI, 8. Gentili added: "It is not for subjects to inquire too curiously which side took up arms with the better right" (DJB, I, 25 [p. 126; CIL translation]).

> Other lesser folk who have no place or audience in the prince's council or in the public council are under no obligation to examine the causes of war but may serve in it in reliance on their betters. This is proved, first, by the fact that it is impossible and inexpedient to give reasons for all acts of state to every member of the commonalty. Also by the fact that men of the lower orders, even if they perceived the injustice of a war, could not stop it, and their voice would not be heeded. Therefore, any examination by them of the causes of a war would be futile. Also by the fact that for men of this sort it is enough proof of the justice of war (unless the contrary be quite certain) that it is being waged after public counsel and by public authority. Therefore no further examination on their part is needed.[14]

The majority position on the citizen's presumptive duty was also apparent when Vitoria and Suárez discussed the problem of doubtful cases. Both theorists agreed that as long as the justice of a war was in doubt, the subject was morally obligated to participate.[15] The primary justification for this position was a lesser-of-two-evils, consequentialist argument. If the citizen obeyed his prince in a doubtful cause, Vitoria and Suárez noted, he merely fought with an uncertain conscience. If, on the other hand, the soldier refused to fight merely because of doubts concerning the justice of a war, he exposed his nation to disaster. As Vitoria put it, "The State would fall into grave peril and the door would be opened to wrongdoing."[16] Suárez added that if subjects disobeyed in doubtful situations, "It would be impossible for princes to defend their rights, and this would be a serious and general misfortune."[17]

There was, however, a minority strain in the just-war tradition which, if it did not reverse the citizen's presumptive duty, at least severely qualified it. The most systematic spokesman for this minority view was the Dutch theorist, Hugo Grotius. In full awareness that he was challenging traditional assumptions, Grotius attacked three pillars of the majority position.

First, Grotius at least implied that potential participants in actions which involve the taking of human life should investigate the situation before taking part in such actions. Alluding to an analogous case which had often been cited to support the opposite view, Grotius commented:

> . . . It is probable that even the executioner, who is going to put a condemned man to death, should know the merits of the case, either through assisting at the inquiry and the trial or from a confession of the crime, in such a degree that it is sufficiently clear to him that the criminal deserves death.[18]

[14] Vitoria, DJB, 25 (CIL translation).

[15] Vitoria, DJB, 31; Suárez, DB, VI, 8 Suárez did stipulate, however, that if the arguments against the justice of a war significantly outweighed the arguments in its favor, the subject was bound to investigate the matter further (DB, VI, 9).

[16] DJB, 31 (CIL translation).

[17] DB, VI, 9 (CIL translation).

[18] JBP, II, 26, 4, 9 (CIL translation); see n. 11 above.

Grotius also differed with his distinguished predecessors on the question of secrecy in wartime. As noted, above, Vitoria and Suárez had argued that expediency often prevented a prince from making public the reasons for his war-policies. Grotius' retort bordered on cynicism:

> Although this may be true of persuasive causes, it is not true of justifiable causes, which ought to be clear and open and, further, should be such as may and ought to be openly set forth.[19]

To this response Grotius appended a polite pragmatic warning: the prince who cannot clearly explain the cause of a war may discover that his skeptical soldiers lack enthusiasm for the war-effort.[20]

Finally, in perhaps his boldest departure from tradition, Grotius launched a frontal assault on the majority view concerning doubtful cases. He began by resurrecting the opinion of Adrian, a Dutch theologian, who had stipulated that in cases of doubt the subject should abstain from war. Without unequivocally adopting Adrian's position, Grotius indicated strong sympathy for it.[21] But Grotius went a step further: He stood the traditional lesser-of-two-evils argument on its head. As we have noted, Vitoria and Suárez had argued that in doubtful cases it was morally safer to fight than to risk betraying one's country. Grotius described the moral dilemma differently and came to the opposite conclusion:

> *Disobedience* in things of this kind, by its very nature, is a lesser evil than *manslaughter*, especially than the slaughter of many innocent men.[22]

In summary, according to the majority view in the classic just-war tradition, the citizen's presumptive duty was to obey his prince's call to arms. The primary reason for this presumption against SCO was the theorists' concern for the preservation of the state as a viable agent of justice. Grotius, on the other hand, was the chief spokesman for a minority view which, if it did not reverse the presumption in favor of obedience, at least seemed to provide an expanded theoretical basis for SCO.

The Justification of Selective Conscientious Objection

A presumption against SCO is precisely not an absolute prohibition of SCO. Implicit in the term "presumption" is the possibility that other considerations will override the presumption. Thus, it is not surprising that several of the major just-war theorists discussed the *Grenzfall*, the situation in which the *prima facie* duty to follow one's prince to war was transcended or reversed.

[19] JBP, II, 26, 4, 5 (CIL translation).

[20] JBP, II, 26, 4, 6-7.

[21] JBP, II, 26, 4, 4-8. Adrian, who late in life became Pope Hadrian VI, had expressed his view in a work entitled *Quaestiones quodlibeticae*, II; both Vitoria (DJB, 30-31) and Suárez (DB, VI, 9) had explicitly rejected Adrian's argument.

[22] JBP, II, 26, 4, 5 (CIL translation; italics added).

Generally speaking, the architects of the just-war tradition adopted the standard natural-law position on the question of disobedience to political authority. One of the major theorists, Thomas Aquinas, gave classic expression to the natural-law view in his treatise on law, as well as in numerous other passages of the *Summa theologiae*. Although Thomas did not explicitly relate his analysis of disobedience to the issue of military service, he set clear ethical limits on the citizen's general obligation to obey temporal rulers.

> Man is bound to obey secular princes insofar as this is required by the order of justice. Wherefore if [the prince] . . . commands what is unjust, his subjects are not bound to obey him, except perhaps accidentally, in order to avoid scandal.[23]

The later theorists applied this general doctrine of justifiable civil disobedience to the specific problem of participation in war. Without exception they regarded SCO as a possible response to the call to military service. In the case of Suárez and Gentili the SCO-option was described in rather perfunctory fashion. Suárez noted that if the justice of a war was "extremely doubtful," the subject was morally obligated to investigate the situation before participating. In addition, Suárez implied that SCO was justified if the injustice of a war was "clear," "evident," or "manifest."[24] Gentili, an English contemporary of Suárez, observed that no soldier could be held legally accountable for fighting in an unjust war. Apparently not entirely satisfied with this juridical solution, Gentili went on to acknowledge that a subject could offend in the internal forum of conscience by participating in a war which he knew to be unjust.[25]

It was left to Vitoria and Grotius, however, to provide a more thoroughgoing analysis of the grounds for SCO. Both theorists clearly regarded selective objection as a moral obligation in certain circumstances. In the writings of both, subjective as well as objective factors were taken into account.

The objective prerequisite for SCO was a clearly-unjust war. Grotius was content to state this condition in a single sentence:

> If those under the rule of another [i.e., subjects] are ordered to take the field, as often occurs, they should altogether refrain from so doing if it is clear to them that the cause of the war is unjust.[26]

Vitoria, on the other hand, explained the objective grounds for SCO in somewhat greater detail. His most comprehensive statement concerning SCO was formulated in the following terms:

> If the injustice of a war is clear to a subject, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person. But in the case before us the enemy are innocent. There-

[23] ST, II-II, 105, 6, ad 3 (Dominican Fathers' translation).
[24] DB, VI, 8-9.
[25] DJB, I, 25 (p. 126).
[26] JBP, II, 26, 3, 1 (CIL translation).

> fore they may not be killed. Again, a prince sins when he commences a war in such a case. But "not only are they who commit such things worthy of death, but they, too, who consent to the doing thereof" (Romans 1:32). Therefore soldiers are not excused when they fight in bad faith. Again, it is not lawful to kill innocent fellow-citizens at the prince's command. Therefore not foreigners either.[27]

In elaborating his position on SCO Vitoria sought to clarify the meaning of "clear injustice" and to emphasize the citizen's responsibility-to-know.

> . . . The proofs and tokens of the injustice of war may be such that ignorance would be no excuse even to the subjects who serve in it. This is clear because such ignorance [on the part of subjects] might be deliberate and adopted with evil intent toward the enemy.[28]

A passage in Vitoria's commentary on the *Summa theologiae* of Thomas Aquinas helped to dramatize the definition of deliberate ignorance:

> If the ignorance is crass and, so to speak, wilful, it does not serve as an excuse. Accordingly, I hold that if there are indications that a war is not just, — [if, for example,] I am in doubt, but close my eyes, saying, "What do I know of the matter?" because I feel affection for my king — then I will not be acquitted of sin.[29]

To clinch his point that the citizen had a responsibility to recognize and avoid obvious moral evil, Vitoria cited three historical precedents which would undoubtedly have made a deep impression upon his Spanish audience. If subjects were not responsible for participating in the injustice of their leaders, he declared, then

> [Moslem][30] unbelievers would be excused when they follow their leaders to war against Christians. . . . Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be excused. In addition, the Jewish mob would be excused, which was led by the elders to shout "Away with Him, crucify Him."[31]

[27] DJB, 22 (CIL translation; slightly revised on the basis of comparison with the Latin original.)

[28] DJB, 26.

[29] *Commentary* on the *Summa theologiae* of Thomas Aquinas, II-II, 40, 8; translated by Gwladys L. Williams in James Brown Scott, *The Spanish Origins of International Law*, Vol. I: *Francisco de Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934), p. cxix (translation slightly revised on the basis of comparison with the Latin original).

[30] Vitoria's general position was that Indian subjects often fought because of invincible ignorance; he did not usually extend such tolerance to Moslem soldiers. Compare the relatively mild prescription§ of the *De Indis* with the rather harsh measures countenanced in DJB, 26, 48, and 60.

[31] DJB, 26 (slightly revised on the basis of comparison with the Latin original). Gentili cited an additional example of a clearly-unjust war; in his opinion, "The [Latin American] Indians were not blameless in fighting for a king who made war unjustly' (DJB, I, 25 [p. 126]). Note also Thomas Aquinas' view that the executioners of the martyrs were morally responsible for their actions (see n. 11 above).

The subjective prerequisite for SCO was a citizen's conviction that a war was unjust. According to Vitoria, such a belief was sufficient to justify SCO, regardless of whether the war was in fact just or unjust. In his words,

> . . . Subjects whose conscience is against the justice of war may not engage in it, whether they be right or wrong. This is clear, for "whatever is not of faith is sin" (Romans 14:23).[32]

Writing about seventy-five years after the death of Vitoria, Hugo Grotius reiterated and endorsed Vitoria's view.[33]

In summary, several of the major just-war theorists discussed the circumstances in which SCO was morally justified. There was general agreement among the theorists that no citizen was obliged to participate in a war that was clearly unjust. Vitoria and Grotius added two refinements to this general consensus. They asserted unequivocally that the subject had a moral duty *not* to take part in a clearly unjust war. Second, according to Vitoria and Grotius, a citizen's sincere conviction that a particular war was unjust obligated him to abstain from military participation.

Legal Provision for Selective Conscientious Objectors

When we look to the classic just-war tradition for statements concerning SCO and the law, we find that the major theorists wrote comparatively little on the issue. A partial explanation for this relative silence is that the just-war theorists concentrated primary attention on the spheres of morality and international law rather than on the provisions of domestic or intranational law. In the case of the later theorists, the silence can also be traced in part to military recruitment practices of their times. Virtually all soldiers in armies of the sixteenth and seventeenth centuries were volunteers, who fought either as professionals in national standing armies or as mercenaries ready to offer their services to the highest bidder.[34] In a context where voluntary participation in military service predominated, the problem of legal provision for SCO was understandably somewhat less acute.

Of the theorists discussed in this essay, only Hugo Grotius explicitly considered how the state should deal with the question of selective conscientious objection. He recommended that administrative procedures be established to insure that no citizen—whether pacifist or selective objector—would be compelled to participate in war against his conscience. Concretely, he proposed that a special tax should be levied on selective objectors.

[32] DJB, 23.
[33] JBP, II, 26, 3, 5.
[34] Lynn Montross, *War Through the Ages* (New York: Harper & Row, 1944), pp. 204-205, 266-267; cf. Walters, "Five Classic Just-War Theories," pp. 207-209.

> . . . If the minds of subjects cannot be satisfied by the explanation of the cause of a war, it will by all means be the duty of a good magistrate to impose upon them extraordinary taxes rather than military service, particularly where there will be no lack of others who will serve.[85]

At no point did Grotius clearly state the warrant for this policy-recommendation. One can perhaps surmise that the logic of his just-war position impelled him to seek institutional arrangements which would make possible the kind of discriminating ethical judgments which he advocated. In addition, however, one finds evidence that Grotius had been sensitized to the problem of SCO by the experience of contemporary Christian conscientious objectors and by pacifistic emphases within traditional Christian ethical thought. In the passage immediately following his discussion of official provision for SCO, Grotius wrote:

> . . . Even if there can be no doubt respecting the cause of war, still it does not seem at all right that Christians should be compelled to serve against their will; the reason is that to refrain from military service, even when it is permissible to serve, is the mark of somewhat greater holiness, which was long demanded from ecclesiastics and penitents, and recommended in many ways to all other persons.[86]

To summarize, the question of legal provision for SCO was largely ignored by the classic just-war tradition. Grotius, however, recommended the establishment of administrative machinery to accommodate the moral convictions of the selective objector.

In conclusion, we return to two points raised in the introduction to this essay. The apparent disagreement between John Rohr and Justice Douglas seems, in light of the foregoing historical survey, to be readily understandable. Rohr is certainly correct in arguing that, according to the Catholic just-war tradition, SCO is seldom a moral obligation. As we noted in the first part of this essay, the major Catholic theorists accepted the citizen's presumptive duty to go to war and treated conscientious objection to military service as a *Grenzfall*, or limiting-case. However, Rohr fails to accord due emphasis to Vitoria's clear statement that in certain circumstances SCO becomes a moral duty.[87] Justice Douglas, on the other hand, accurately reflects the viewpoint of Vitoria when he asserts that "a Catholic has a moral duty not to participate in unjust wars."

[85] JBP, II, 26, 5, 1 (CIL translation; punctuation slightly revised); cf. JBP, II, 26, 5, title.

[86] JBP, II, 26, 5, 2 (CIL translation). For a discussion of Grotius' relationship to contemporary Dutch pacifists see Walters, "Five Classic Just-War Theories," pp. 253-255, 283-284.

[87] My criticism is not that Rohr's interpretation of the Catholic just-war tradition is incorrect, but rather that it is one-sided. To illustrate, on p. 112 of *Prophets Without Honor* Rohr quotes Vitoria's "third proposition" concerning SCO (DJB, 25). However, he does not cite Vitoria's "first proposition" and "fourth proposition" (DJB, 22 and 26), both of which clearly assert that SCO can become a moral obligation (see nn. 27 and 28 above).

As the second part of this essay has demonstrated, Vitoria unequivocally asserted the citizen's obligation to avoid any collaboration in military injustice. Two other facets of Vitoria's thought remain unmentioned in the dissent of Justice Douglas, however—Vitoria's emphasis on the citizen's presumptive duty to obey and his insistence on subjective or objective certainty concerning the injustice of a war.

The divergent conclusions of Rohr and Justice Douglas serve as an additional reminder of the complexities involved in any effort to interpret or update the just-war tradition. This hermeneutical problem has at least three dimensions. First, within a single theorist—for example, Vitoria—differing tendencies and emphases appear which the would-be interpreter must hold in tension. In the second place, on certain issues there is a lack of consensus within the tradition. Such internal contradictions virtually compel the modern interpreter to choose one view—perhaps the majority view—and to reject others. Finally, the contemporary interpreter must seek to apply an ancient tradition to a situation characterized by post-monarchical forms of government, military conscription in wartime, and highly-sophisticated weapons of destruction. In short, it is difficult, but possible, to reconstruct what the major just-war theorists said about SCO within their varied historical contexts. What their views mean for our own attempt to think through an ethic of war and peace is much less clear.[38]

[38] I wish to thank Professors Charles E. Curran and James F. Childress for their helpful comments on an earlier version of this article.

Mr. KASTENMEIER. The hour is late. We still have two witnesses. I would next like to welcome Mrs. Jacqueline Levine, cochairman, Governing Council, American Jewish Congress.

We have your statement which we will accept in its totality. It is a fairly long statement. I wonder if I could recommend that you proceed directly to that point of your statement dealing with congressional power since we will be discussing each of the bills in more detail later.

TESTIMONY OF JACQUELINE LEVINE, COCHAIRMAN, GOVERNING COUNCIL, AMERICAN JEWISH CONGRESS

Ms. LEVINE. Yes; thank you very much. The American Jewish Congress welcomes this opportunity to speak with you this morning about the pending legislation dealing with amnesty for persons who resisted U.S. participation in the war.

I am especially pleased, too, that these hearings are taking place so that the whole Nation can have its conscienceness raised and can be extended the educational opportunity that those of us in the room today are having. I have learned already from the previous discussions and the statements made.

The American Jewish Congress is a membership organization and we are concerned with the preservation and extension of the American democratic way of life and with the survival of the Jewish cultural tradition.

We have a Governing Council which is the highest policymaking body between our conventions which last June drew up a resolution which I shall not read. It is attached to our statement, and it supports broad amnesty, or to be more specific, we support universal and unconditional amnesty.

My statement, and I will try to be brief, is submitted in accordance with that resolution.

We believe that total amnesty should be exended to all men who refused to participate in the war in Indochina for reasons of conscience.

The subcommittee has before it a number of bills, and we feel that a number of the provisions of H.R. 3100 embody substantially our position.

I would like to make just a few initial comments before coming to the two main points.

It has been said again and again, but I want to say it just once more, that amnesty does not mean forgiving. President Nixon said it is an act of forgiving and that is a misstatement. Amnesty means to forget, to put behind you. For those of a more poetic inclination, there is a lovely way to describe it as the principle of the blessed act of oblivion. It is the only way, we feel, to place the conflicts and tensions and deep divisions created in our society by this situation behind us. We believe that it is in the interest of social justice and reconciliation, that it is the law's way of undoing what the law has done.

This is another point which has been referred to already this morning. People have said that this would not be a lawful thing, it would create a bad precedent for the future. Amnesty is law, it is a superseding law. By restoring public confidence in the law it serves the law. It is not license. It does not say that you shirk your responsibilities in the future, but it reaffirms the law. It also reaffirms our religious and

American heritage; that is, the dependence of our society on higher moral law. This should be underscored, that amnesty and pardon are essential parts of our legal system.

We deal with the unusual circumstances of this war certainly and the amnesty we propose would not apply to future conflicts.

You will be hearing testimony about past amnesties. Certainly, President Lincoln's magnanimity toward the Southerners who engaged in rebellion and, therefore, were technically guilty of treason is worth remembering. But that is past. What we are talking about is the most unusual, the horribly unusual conditions that the war in Indochina placed upon this Nation for one terrible decade. That war was unique and stands apart from all other wars and ought to be viewed as sui generis. There never was a war objected to by so many citizens. Representative Kastenmeier, you yourself gave some figures at the beginning. Mr. Schwarzschild's eloquent statement gave some figures. We have them in our statement.

Be it said that we are really dealing with hundreds of thousands of people. We are talking about men convicted for draft violations, deserters at large, those that resisted and live in exile abroad and the tremendous number of veterans who have less than honorable discharge which were given without any due process or as a result of courts-martial, and, as has been said, these less than honorable discharges were imposed in disproportionate number upon minority groups and less educated and poorer segments of society.

There were hundreds of thousands of Americans who protested the war. Thousands of those were arrested and their charges range from mild to the serious.

There are two major points which our resolution and our statement refer to, and which I am going to talk about now. The first is the categories of those to be amnestied. We would include resisters, deserters, exiles, and those veterans who received less than honorable discharge. We make no distinction between draft violators and draft resisters on the one hand and on the other hand deserters, because there was only one difference, we feel, among these men, that is when they decided to resist. Some of them, for the most part college students who had access to counseling and could speak to people who understood, decided that the war was wrong for them and that they could resist. But many others only realized the meaning after they were in the Army and their course was desertion. The deserter, it has been demonstrated, is more often the one with less well-formed ideas of resistance until his induction. We believe amnesty, therefore, to be valid for both those who violated the law against desertion and those who violated the Military Selective Service Act.

The Armed Forces have granted less than honorable discharges. These discharges were imposed disproportionately, as I have said, upon poor and less-well-educated people.

My second point deals with the matter of conditions or alternative service to be imposed upon those amnestied. We do not believe that there ought to be any conditions imposed at all. My organization does not assume that those men who resisted fighting did so because they wanted to get away with something. We believe they acted as they did because they disagreed with the very premise of the war. Their actions caused them great pain and their families terrible suffering, and they

are still in pain and still suffering. It is no picnic, no bed of roses, to be living in exile somewhere, and it is no pleasure to be in hiding, certainly not for the families; and I, too, have spoken to families of young men who are abroad. They did not do what they did because they thought they could get away with it. They did it because there was something deep inside of them that said they could not fight this war because they felt it was immoral. To demand now that they pay a further price, that they spend 2 years doing heaven knows what, which probably would not be very productive to society anyway, is tantamount to saying: "You were guilty and you have to pay some type of service. The Government was right all along." This is a punitive concept and something ,we feel, that has no place in America in 1974 when we are moving toward peace. It is a judgment which amnesty legislation, we believe, should not make.

Further, it seems to me to be in the very best interest of our whole society to bind up our wounds, not to exacerbate them. Our Nation is still deeply divided over the war, and now to have elaborate administrative procedures with boards and testimony and all the rest of the inquiry into each individual's act of resistance, we feel, would just prolong the agony. We believe our entire society and particularly our young people were victims of a policy which they did not know how to control. Yes, we made and had our protests. But these young people were really victimized, and others are in exile. All of them are victims, and there should not be any further punishment. We need everybody back to help build a decent and strong America. We do not need a reopening of the debate over Vietnam, which tore us apart for 10 years.

I think it is important, too, to say that a decision on an amnesty bill can be made without reference to one's position on the war in Vietnam. A decision for amnesty legislation would not imply that this committee has made a negative judgment on the war. True, my organization did oppose U.S. participation in the conflict, but we do not believe that reopening that debate is constructive, or that there will be anything gained by it. Rather, we propose that amnesty, forgiving, oblivion be declared as the way to put our conflict behind us and move our people forward. Amnesty is not to be thought of as based on one's policy, only on the need for it now to heal our Nation.

I want to close with a reminder that was given to many of us privileged to know and to hear the late Dr. Abraham Joshua Heschel, a revered rabbi and professor of Jewish ethics at the Jewish Theological Seminary. At the interreligious conference on amnesty in March 1972, he harked back to the words of Leviticus and said, "Thou shall not bear a grudge against the children of your people."

A broad amnesty bill, too, would be stating its belief that our Nation must forget the war and its paralleling divisiveness. It would be stating we are beyond vindictiveness, and it would be making a giant stride toward bringing our country together.

In closing, I repeat my organization's desire and urge that a broad amnesty bill be enacted.

Thank you very much. Our resolution, as I noted, is attached, and I will not read it to you.

Mr. KASTENMEIER. Without objection, of course, the resolution of the American Jewish Congress, "Resolution on Amnesty, 1973," adopted through its governing council, which is attached to Ms. Levine's statement will also be made part of the record.

[Ms. Levine's statement follows:]

STATEMENT OF JACQUELINE LEVINE ON BEHALF OF THE AMERICAN JEWISH CONGRESS

The American Jewish Congress welcomes this opportunity to be heard by this Subcommittee on the subject of pending legislation dealing with amnesty for persons who resisted United States participation in the Vietnam War. I am Jacqueline Levine, Co-Chairman of the Governing Council of the American Jewish Congress and President of its Women's Division.

The American Jewish Congress is an organization of American Jews deeply concerned with the preservation and extension of the American democratic way of life and with the survival and enrichment of the Jewish cultural tradition. My statement is submitted to this Subcommittee in accordance with a resolution adopted by the Governing Council of the American Jewish Congress on June 10, 1973. (A copy is attached to this statement.) In accordance with that resolution, we here express support of a broad amnesty.

We believe that amnesty should be extended to all who were compelled by their conscience to refuse to participate in the recent hostilities in Indochina—to draft resisters and evaders, deserters, exiles and those veterans who have been penalized for life through less than honorable discharges. This, of course, does not mean amnesty for crimes of violence, or for offenses that would be crimes apart from conditions of war or requirements of military service. The amnesty to be given, we believe, should mean total restoration of legal and political rights. Finally, in our view, no condition of alternate service should be imposed.

THE PENDING BILLS

We have examined the bills pending before this Subcommittee and believe that a number of the provisions of H.R. 3100 (Dellums) embody substantially the position we express here. Briefly, this bill provides as follows:

After appropriate findings, H.R. 3100 would provide for amnesty for those who have faced or may face criminal action or other adverse treatment by the government because of specified conduct between August 4, 1964 and the enactment of the bill. The amnesty would be automatic in some cases; in others, it would be granted by a newly created Amnesty Commission.

Section 3 of the bill defines amnesty as (1) restoration of all civil and other rights that may have been lost or limited as a consequence of violation of any of the laws covered in Sections 4 and 6; (2) immunization from criminal prosecution for such violations; (3) expunging of records of such violations; (4) granting of an honorable discharge to persons who received less than honorable discharges because of such violations; and (5) nullification of "all other legal consequences" of such violations.

Under Section 4, an automatic, immediate amnesty would be granted for violations of (1) the provisions of the Military Selective Service Act with respect to evading or refusing registration or induction, counseling such refusal or evasion and destruction of registration or classification cards; and (2) various provisions of the United States Penal Code dealing with the Armed Forces, including those making it a crime to desert or to solicit or advise desertion, and to advise or counsel or attempt to cause insubordination by any member of the Armed Forces with the intent to impair morale or discipline.

Section 5 would establish a five-member Amnesty Commission, with the President, President Pro Tempore of the Senate, Speaker of the House and the Senate and House Minority Leaders each appointing one member. Members would be appointed for the life of the Commission and would be given appropriate administrative powers.

Under Section 6, the Commission would be empowered to grant general amnesty, as defined in Section 3, to any person who violated any Federal law not covered by Section 4 or any state or local law, during the wartime period, if the Commission found (1) that the violation "was in substantial part motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina" and (2) that he was not personally responsible for significant property damage or substantial personal injury to others. The bill would further provide, however, that, where there has been such property damage or personal injury, the Commission may grant amnesty if it finds that the conduct "was justifiable on the basis of a moral or ethical belief deeply held by the individual."

Section 6(b) would empower the Commission to insure the grant of an honorable discharge where it was denied by the military in violation of the rights granted under Section 3 of the bill. Under paragraph (c), grants of amnesty by the Commission under Section 6 would be made upon application to the Commission.

Such an application would have to be made within four years after the effective date of the Act. Further paragraphs in this Section provide appropriate administrative procedures and judicial review.

Section 7 would provide for the restoration of citizenship to any former citizen "who states that he renounced such citizenship solely or partly because of disapproval of involvement of the United States in Indochina."

Sections 8, 9 and 10 contain customary provisions concerning judicial proceedings, appropriations and separability. Section 11 provides that Sections 4, 6, 7 and 8 shall take effect upon enactment of the bill.

The identical bills, H.R. 236 (Abzug) and H.R. 5195 (Abzug, Conyers and Mitchell), differ from H.R. 3100 only with respect to the effective date (Section 11). They provide that Sections 4, 6, 7 and 8 shall take effect on the date of cessation of United States military operations in Indochina, with the date to be proclaimed by the President not more than three months after enactment of the bill.

The other amnesty bills before this Subcommittee are far more limited. Thus, H.R. 674 (Koch) would (1) express Congressional approval of full or partial Presidential amnesty for nonviolent military offenders and other violators of Federal laws on such terms as the President might prescribe; (2) authorize the President to restore citizenship to persons who relinquished it because of their disapproval of United States participation in the Vietnam War; and (3) authorize the President to grant amnesty or partial amnesty to violators of state laws.

H.R. 2167 (Roybal) would grant full immunity from prosecution and punishment for draft evasion or failure to register, but subject to a requirement of alternative service. Each individual would have to enter into an agreement with the government to serve a period of two years in the Armed Forces or in "public service." The latter term would include service in VISTA, a VA hospital or any other Federal employment involving public health and welfare. Other provisions would take care of those now serving prison sentences for draft evasion. The bill would also express the sense of Congress that Presidential pardons should be granted to those persons who fulfill such an agreement or who have already served their sentences for draft evasion. It is to be noted that this bill would not cover deserters or any of the other categories covered by the comprehensive provisions of H.R. 3100.

H.R. 10979 (McCloskey) would grant amnesty to any person who evaded or refused induction. With respect to deserters, it would empower an Amnesty Commission, set up under provisions virtually identical with those of H.R. 3100, to grant amnesty if the deserter accepted two years of alternate service under provisions similar to those of H.R. 2167. (This bill, however, would require that such service be performed at the "lowest pay grade" used in the service where the work is done.) It also contains appropriate provisions dealing with persons already convicted of evasion and expresses the sense of Congress in favor of Presidential pardons.

H.R. 10980 (McCloskey) differs from H.R. 10979 only in that deserters would receive automatic amnesty, without a requirement of alternative service, if they surrendered to the government within one year from the effective date of the legislation.

H.R. 13001 (Robison) would grant amnesty for draft evaders and resisters, conditioned on alternate service. The bill would amend Title 18 of the United States Code to provide that the laws punishing persons who evade or refuse registration or induction shall not apply where the offense occurred between August 4, 1964 and March 29, 1973, if the offender presents himself to the Government not more than two years after the date, proclaimed by the President, on which all Americans missing in action have been accounted for. The offender would have to agree to service for two years in the Armed Forces or some alternative civilian service, beginning at the lowest pay grade used in that service, and to continuing at pay levels no greater than those approved by a National Amnesty Board, created to administer the law. The Board would consist of three members appointed by the President with the consent of the Senate. The bill also contains provisions concerning persons already convicted and concerning Presidential pardons.

Finally, H. Con. Res. 144 (Hogan) and the identical H. Con. Res. 385 (Bowen) would express the sense of Congress that no pardon or amnesty should be enacted by the Congress or granted by the President with respect to members of the Armed Forces who have fled to a foreign country to avoid further military service.

CONGRESSIONAL POWER

There does not seem to be any substantial question about the power of Congress to enact amnesty legislation. The United States Supreme Court spoke authoritatively on this subject in *Brown* v. *Walker*, 161 U.S. 591 (1896). After referring to Article II, Section 2 of the United States Constitution which vests in the President the power "to grant reprieves and pardons for offenses against the United States," the Court said (at p. 601):

". . . this power has never been held to take from Congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction, . . ."

The Court went on to say (at pp. 601–602):

"Amnesty is defined by the lexicographers to be an act of the sovereign power granting oblivion, or a general pardon for a past offence, and is rarely, if ever, exercised in favor of single individuals, and is usually exerted in behalf of certain classes of persons, who are subject to trial, but have not yet been convicted."

THE NEED FOR AMNESTY

This Subcommittee knows full well the deep tensions, the chasma that have been created by our country's participation in the hostilities in Indochina. Termination of the hostilities engendered within our people during the past decade has become an urgent national need. It can best be achieved by the kind of universal amnesty that would constitute a true "forgetting" or, in the words of the Supreme Court, by "granting oblivion." Such an act, we believe, is the only way we can place our recent bitter conflict behind us.

Historic precedent often offers guidance to future generations and certainly President Lincoln's magnanimity towards Southerners who had engaged in rebellion and were technically guilty of treason has relevance here. However, we will not review other acts of amnesty in our history, a record which this Subcommittee has certainly studied, because we believe that this particular war must be viewed as *sui generis*, as standing apart from all others. The resistance to our involvement in Vietnam should be considered in its uniqueness, with the ultimate focus on the long-range interest of the nation. There has never been a war which so divided our people, to which so many objected, and which so many resisted. The figures are shocking and instructive: 7,400 persons have been convicted as draft refusers. The Army alone reported 20,000 deserters at large in May 1973 and the figure for all the Armed Forces must obviously be larger. Estimates for the number of exiles abroad range over 30,000—a figure that seems reliable in view of the fact that the Canadian Government reports that, between 1964 and 1973, it admitted 17,000 American males of draft age as landed immigrants. Finally, the Armed Forces report that 450,000 persons received less than honorable discharges, most of which were imposed on less well-educated, poorer, and minority group citizens.

It is important to emphasize that this body can reach its decision on amnesty legislation without making a judgment concerning the rights and wrongs of United States policy in the Vietnam conflict. The American Jewish Congress, it is true, was among those organizations which, during the war, expressed opposition to United States participation. Whether we were right in this is a question on which Americans still differ strongly. There is little to be gained by a continuation of that debate now. The case for amnesty has an entirely different basis—the need, wisdom and morality of "oblivion" as a form of healing.

We therefore not only urge this Subcommittee to approve an effective amnesty bill but also express the hope that the Subcommittee and Congress as a whole will deal with this pressing matter promptly. We must have an end to the continuing alienation of our exiles, to the continuing criminal trails and imprisonments, to the permanent handicaps of prison records and unfavorable discharges visited upon a large fraction of our youth because they acted on what was to them a compelling moral necessity. Let us have a speedy end to this agony.

THE SCOPE OF AMNESTY

The principal question raised by proposals for broad amnesty is the propriety of extending it not only to draft evaders but also to deserters and those who counseled and assisted desertion. We fully recognize that desertion has always been viewed as a serious crime, principally because it engenders the mental picture of men on a battlefront endangered by the flight of their comrades. But, realistically, that is not what is involved in the case of those now charged with desertion or facing the prospect of such a charge. We have heard nothing to suggest that desertion in the face of the enemy was a significant factor in the behavior of the American Armed Forces in Vietnam.

The American Jewish Congress believes that amnesty should extend to deserters primarily because any measure limited to draft evaders or resisters would constitute a form of class legislation. Practical experience during the Vietnam war demonstrated that desertion was the poor man's form of resistance. Prior to induction, he was less likely to have clearly delineated objections to service. His objections were first brought out by his direct experience with the conditions of service, at which point they could be effectively expressed only by desertion.

To put it differently, the essential difference between draft violators and deserters was one of timing; that is, when they decided to resist. Some, mostly college students, found out before they were called up that the war was for them wrong and that draft resistance was a possible course of action. Many others, however, did not realize the impact and meaning of the war until they were in the army. For them, the only course was desertion.

We believe that no distinction, legal or moral, can be drawn among those who refused to serve in Vietnam on the basis of whether they violated the Military Selective Service Act or the laws against desertion. If the concept of amnesty is valid, as we think it is, it is valid for both groups.

We support the provisions of H.R. 3100 dealing with correction of less-than-honorable discharges imposed because of offenses related to opposition to the United States participation in the Vietnam war. Plainly, if criminal penalties are to be waived, the lesser but very real penalties of less-than-honorable discharges for the same conduct should be ended and their effects eliminated.

Section 6 of H.R. 3100 deals with the difficult problem of violations of Federal, state and local penal statutes not related to military service which occurred in the course of expresisons of opposition to the war. It would apply to those who engaged, for example, in illegal forms of demonstration or destruction of draft board records. We support these provisions with the exception noted below. We believe that the suggested procedure, under which each case would be considered by the Commission, is appropriate and workable.

The bill, however, would permit the Commission to grant amnesty even where property damage or personal injury occurred "if it finds that such conduct was justifiable on the basis of a moral or ethical belief deeply held by the individual." This provision is not unreasonable in the case of property damage. But we cannot accept a judgment, and do not believe that the United States Congress should make a judgment, that "substantial personal injury to others" can be justified on ethical grounds. We therefore suggest omission of the words, "or substantial personal injury to others," from page 8, line 24.

ALTERNATIVE SERVICE

Some of the bills before this Subcommittee would condition amnesty, in some or all cases, on performance of service in the Armed Forces or on public works. It is our considered opinion that no such condition should be imposed.

It cannot be said that the men who resisted fighting in the Vietnam war did so because they wished to return home later "with impunity." Rather, they did what they did because they disagreed with the premise of the war. They made their decisions at great pain to themselves and their families. A requirement of service as a condition for return could only be interpreted as a form of punishment for a guilty act. If we say that a man must give his country another period of his life, particularly at minimum wages, we are really saying that he was guilty in resisting the war and that the government was right all along. That is precisely the kind of judgment that an amnesty measure should not make.

If, as we believe, the purpose of amnesty is to bind up wounds and restore national harmony, we must not attach a rider which says in essence, "We will forgive you if . . . ." It would be ironic indeed if we persisted in vindictiveness against our own men at the same time that we seek to move toward peace with the peoples of China and Southeast Asia.

Beyond this philosophical evaluation lies a pragmatic reality that has nothing to do with approval or disapproval of the war. Peace finds our nation still deeply divided, embittered and haunted by the spectre of what went before. We need all of our people home to rebuild. Above all, we do not want to initiate and maintain an elaborate administrative procedure that will extend for years the divisive debates over the treatment of war resisters and the merits of their resistance. We certainly do not need to prolong the agony over our differences on Vietnam through the period during which the ritual of substitute service would continue.

Rather we should recognize that all of American youth were victims of a policy over which they had no control. Some were killed, some were exiled, but all were victims and none should be punished further. We need them back.

AMNESTY AS A LEGAL ACT

It has been argued that a grant of amnesty would encourage disrespect for law and also that it would encourage resistance to legitimate military needs in the future. The latter point may be answered briefly. Who would be so foolish in a future wartime period as to resist a legal requirement of service on the chance that the unique circumstances of the recent conflict would again prevail?

The broader argument that amnesty encourages disrespect for law would, if valid, prevent any act of amnesty or pardon. In fact, however, both amnesty and pardon are an essential part of our legal system. They are designed to provide a degree of flexibility so as to enable the system to deal with unusual circumstances that could not be dealt with in the formulation of a law of general application. Unacknowledged, arbitrary and selective failure to enforce a law might well breed disrespect for the legal system as a whole. Formal adoption of an amnesty measure, in accordance with the procedures of that system, would not.

CONCLUSION

At the Interreligious Conference on Amnesty in March 1972, the late Dr. Abraham Heschel, distinguished rabbi and Professor of Jewish Ethics at the Jewish Theological Seminary, reminded us of the words in Leviticus: "Thou shalt not bear a grudge against the children of your people." A grant of amnesty to those who found it impossible to comply with our law because of their abiding belief that participation in the Vietnam war was morally wrong would fulfill that admonition.

The American Jewish Congress therefore urges prompt enactment by the United States Congress of an amnesty bill, broadly framed along the lines suggested above.

Resolution on Amnesty—Adopted by the Governing Council, American Jewish Congress, June 10, 1973

One of the most grievous wounds inflected on the United States by the Vietnam War was the deep divisions it caused among us. Thousands of young Americans found that their conscience did not permit them to serve in an armed conflict which they believed to be wrong. Many of them are living outside their country today. Others live here under the threat of criminal prosecution.

The nation is giving increased attention to binding up the wounds caused in our society by the Vietnam War. While historically Presidents have granted amnesty, court decisions and other interpretations seem to indicate that Congress also has the right to grant amnesty.

We urge that, in accordance with this historical tradition, amnesty now be extended to all those who were compelled by their conscience to refuse to participate in the Vietnam War. This amnesty for acts of conscience should include draft refusers, deserters, exiles, those abroad, those who received a less than honorable discharge, and those who have disavowed their citizenship. Any distinction between draft evasion and desertion is unwarranted and would tend

to discriminate against disadvantaged groups in the population. We further believe that those who have served or are serving prison terms for following their conscience by refusing to serve in the Vietnam War should receive full and complete pardons.

Many well meaning individuals have advanced proposals for amnesty conditioned on some form of alternative service. We believe that the adoption of any such proposal would necessarily prolong the divisive debate engendered by the Vietnam War. The administration of a conditioned amnesty system would involve delicate distinctions in the treatment of those being granted amnesty. Inevitably there would be disagreement about the methods of administration, the judgments imposed and the results achieved. We therefore consider conditional amnesty proposals unacceptable.

We urge that there be a true amnesty without demands for any form of alternate or national service—a complete "forgetting" of the past in the interest of reconciliation.

Mr. KASTENMEIER. I would like to yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Mrs. Levine, for a very inclusive statement.

I have one question I would like to ask you about. On page 2 you say, "We believe amnesty should be extended to all who were compelled by their conscience to refuse to participate in the recent hostilities in Indochina."

It is my feeling that most of the young people who are in exile or in hiding or anything else, were compelled by their conscience to do so, but I am also pretty sure there were some who did not do it as a matter of conscience but who said I do not want to go and I would rather live in Canada or Sweden or some place than go. Would your statement and your belief in amnesty include also those people who in a sense really did not recognize their own duties to their Nation?

Ms. LEVINE. Yes, it would. I do not know that I can agree with your initial premise that there were people who chose to go to Canada or Sweden, but even assuming that, rather than go through the whole hassle of going to each one of their reasons and drawing them before boards of inquiry, which could go on forever, we would take that chance, yes, and say all young men who went overseas or went into hiding for whatever the reasons.

Mr. SMITH. So it does not depend on their conscience, whatever the reason they went.

Ms. LEVINE. We are going to assume that in the very large majority of cases it was for conscience.

Mr. SMITH. Thank you very much.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. I want to thank the distinguished lady for that eloquent testimony and ask one or two questions.

You subscribe to this with one exception, but I am wondering whether you are entirely satisfied with the really operative section, section 6. It states that the Commission may give amnesty if the Commission finds that such violation was in substantial part motivated by the individual's opposition: (2), or protest against the involvement of the United States in Indochina. You have heard the testimony of the ACLU, and we go back to the whole question of a tribunal sitting in judgment. Do you have any better approach to that?

Ms. LEVINE. I know it is difficult. I was just rereading it myself as I sat there. I do not have better language myself. I am not a lawyer. I would imagine there are people within my organization who might be able to address themselves to that. It is difficult, and yet does not this board apply to almost everybody? I think there would be few exceptions; is that not correct?

Mr. DRINAN. It does. Knowing the legal expertise of your organization, I would solicit further comments from them precisely about these very difficult things and also by judicial review by the person who has been turned down. It seems to me we need a good deal more work and also as to the reasons for amnesty, sections 2 and 3 of this bill, 3 and 4, I really think we need a good deal more work.

So your statement is eloquent and I just hope that people from your organization can give us further help on those sections.

Ms. LEVINE. I know they would be glad to.

Mr. KASTENMEIER. Representative Mezvinsky.

Mr. MEZVINSKY. I am sorry I could not be here for your statement, but I had an opportunity to read it and I want to say your comments made an impression on me. Thank you.

Ms. LEVINE. You all made an impression upon me, too.

Mr. KASTENMEIER. Thank you very much.

Our last witness this morning, representing SANE, is the Rev. John Wells, retired major in the U.S. Air Force, attorney, and former special consultant to the U.S. Department of Defense.

Welcome, Mr. Wells. We have met and talked before. You are most welcome here. I believe you have a short statement plus a policy statement from SANE.

TESTIMONY OF REV. JOHN WELLS, MAJOR, U.S. AIR FORCE (RETIRED), ATTORNEY, FORMER SPECIAL CONSULTANT, U.S. DEPARTMENT OF DEFENSE 1964–69, SANE

Mr. WELLS. That is correct.

I see friends from Massachusetts. I will not speak with my Massachusetts accent, but put on my southern accent.

It is a joy to be here. I want to ask if the committee will accept the SANE policy on amnesty that was adopted by the National Board of SANE in June 1972.

There are two particular provisions that I would like to talk about. My accent, as you know, is southern. My great grandfather lost his leg in Gettysburg. He was able to get home on a stump whittled out by him in Savannah, Ga., and that is why I am here this morning.

I happen at the moment to have an office across the street—on St. Asaph Street, Alexandria, Va.—from the home of Robert E. Lee. I think he was a great man in many, many ways. Somehow at this moment when I think of what was going on in that Civil War that tore us apart, that one on the other side of my family killed my grandfather on my father's side, in the Battle of Atlanta; I think of the wonderful experiences I have had in Massachusetts—Father Drinan and many others there—I cannot help but think we could have continued in those days the kind of thing that could have torn this country apart and kept it apart forever. When I think of Robert E. Lee, after the amnesty provided by Andrew Johnson, he said, "I believe it to be the duty of every man to unite in the restoration of the country and the reestablishment of peace and harmony. Those considerations governed me in the counsels I gave others, and induced me on the 13th of June to make application to be included in the terms of the amnesty proclamation * * *."

Well, President Johnson—this is Andrew Johnson, of course—had set up an amnesty provision, but it was not total and not complete. There were 16,000 people that applied for pardons that he wanted to rule on and look at and talk about, and he really wanted to see personally, so that he could rule and make a decision. This became such a difficult problem, such a difficult problem.

What could you say to this man who said he did not do it because he wanted to, he was made to do it; or to the commander of the *Alabama* who said he was just serving on the ship, was caught in a battle, and suddenly was on the wrong side. To have to go through the process of a commission, without safeguards of proper review, seems to me to not be needed when there are really so few that really are involved in the total country.

I do not feel it will be decisive at all. I have talked to them all over this country. I feel that the country now more than anything else in this world wants a healing, wants the kind of thing that finally happened on Christmas Day in 1868, when Andrew Johnson over the objection of the Congress, granted amnesty to everyone. I wondered about the amnesty situation, whether or not Congress had to do it or whether the President had to do it.

The second point is, I not only think that the Congress has the authority to do this, I think the Congress now has the obligation, the moral obligation, to stand up and say we admit that this war divided this country and now we can put it back together.

In 1862, the Congress passed an amnesty bill. Of course, this was during time of war, hoping the people in the South would quit and the war would end. It was on the basis of this bill that Lincoln first gave his amnesty bill in 1863. There is no question in my mind, and I am a lawyer as well as a minister as most of you know, the Supreme Court in 1877 said there is not that much difference between amnesty and pardon. The Constitution grants the authority to grant amnesty. The President has the authority to pardon individually, and therefore, he has the power to pardon altogether. The Congress of the United States has the authority to make laws that make objectors or make crimes or make acts criminal. That is the authority within that same authority to make them not criminal. The Congress has the ability and authority, and if it now has the will, then it can stand up and say we can admit that we as a Congress never really authorized the war in Vietnam. We as a Congress have never really specifically state that this was a war that we would direct, and that we now as a Congress are going to say that those who felt that the Congress was divided from the very beginning of the Tonkin Gulf resolution, can say, we can heal that division and make this a time of reconciliation and hope, a time of love that can come back into this country and heal the divisiveness and the wounds that came so close to tearing us apart.

With this I urge, and the National Board of SANE, and as you have heard from the groups and churches here before you, urge a general and complete amnesty. I would urge personally that this not be done by a commission but be done by law, and rather than to have the situation where you placed President Johnson in having to review each case, that it be done and be done completely by the Congress. In my opinion, as a lawyer, I think you have that authority; and as

someone who is a great admirer of so many of you, I urge you to exercise your legislative power. Thank you.

Mr. KASTENMEIER. Thank you for that persuasive statement.

Incidentally, without objection, the policy statement of SANE will be received for the record.

[The policy statement of SANE follows:]

SANE POLICY ON AMNESTY, ADOPTED BY THE NATIONAL BOARD OF SANE, JUNE 24, 1972

The task before the country is not merely to end the war in Southeast Asia, being waged at this time with unparalleled ferocity, but also to heal the wounds in our own society. This task is similar to the one faced by Presidents Lincoln and Andrew Johnson. Both of the Civil War Presidents issued proclamations of amnesty for those who had engaged in rebellion and were therefore technically guilty of treason. No Confederate soldier was required to atone for his acts by doing special service. This display of conciliation in the face of civil war was an act of moral strength and practical wisdom.

The tradition of amnesty in the United States goes back to the very beginnings of the Republic. President Washington proclaimed amnesty for participants in the Whiskey Rebellion; John Adams granted amnesty to those who undertook the so-called Fries Rebellion of 1799, and Presidents Jefferson, Madison and Jackson granted amnesty to army deserters a total of five times. The three proclamations by President Madison occurred during the War of 1812, and required only that deserters return to their units within a stated period.

Those who have refused to participate in the American war in Southeast Asia have been guided, for the most part, by conscience and principle. They have acted on moral grounds, based on judgments now shared by many of their fellow Americans. They should not be penalized for having acted on the basis of convictions reached later by a majority of other citizens.

Existing laws and judicial rulings have been inadequate to deal with the questions raised by resistance to a war considered unjust and immoral by the resisters. Federal law has required objection to *all war* as a condition for granting the status of conscientious objector. Moreover, until 1970 the Supreme Court required objection to all war to be grounded in religious beliefs. Therefore, in order to qualify as a C.O. a young man had to prove he was a religious and complete pacifist. Relatively few of the war resistors fell into this category.

As of 1970, it has been legal to object to war on moral as well as religious grounds. The Supreme Court decision thus increased the potential number of C.O.'s, but only after the American military involvement in Southeast Asia had started to decline. Those with moral objections to war who were denied C.O. status in the past and who resisted service in Southeast Asia had only a stark choice betwen jail or exile. They have a clear claim on the nation for amnesty.

It is said by some that amnesty would be unfair to the families of Americans who died in Southeast Asia. We believe that these tragic losses cannot sanctify an unjust war. Fairness to the dead requires not a spirit of vindictiveness, but a spirit of reconciliation which can help end the divisions caused by the most searing national experience of this century.

SANE therefore urges the President and the Congress immediately to declare a universal and unconditional amnesty for those who refused to participate in the American war in Southeast Asia, beginning in 1961 and covering the following instances:

1. All persons now outside the U.S. who were deserters or draft refusers for reasons of conscience should be allowed to return without jeopardy and with full rights of citizenship;

2. All persons currently held in civilian or military prisons for reasons of conscience should be promptly released;

3. All pending and potential prosecutions of those who deserted or resisted the draft for reasons of conscience should be dropped;

4. All those who have completed prison terms or otherwise lost their civil rights due to their opposition to war should have such rights restored; and

5. Amnesty should be unconditional, without penalty or requirement of compensatory service.

Mr. KASTENMEIER. I yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

For the record, we should note Reverend Wells came among us damned yankees for many years and from his pulpit revolutionized the people of Massachusetts and he almost singlehandedly had enacted by the State legislature a resolution, a law saying the people of Massachusetts would not be required to enter the military service for an undeclared war. It was the judgment of the U.S. Supreme Court not to validate that completely, but Reverend Wells made history there, and I am very happy to see he is just as eloquent now as he was then.

I hope, Reverend Wells, you will spell out your testimony on the board or nonboard, and try to help us as another lawyer as to how we can specify certain categories of immunity or amnesty.

I want to thank you for your eloquent testimony and I yield back to the chairman.

Mr. KASTENMEIER. I yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Reverend Wells. I thank you for your eloquent statement.

For the record, would you tell us what the acronym, SANE, is.

Mr. WELLS. It is not an acronym. It started out as the Committee for Sane Nuclear Policy. It has been in existence for quite some time. It is one of the oldest established of what we might label now "peace movements" that set about to cause the United States to look at our nuclear policy, prior to the time of the Vietnamese war and prior to the time we were involved in Southeast Asia. Of course, as we went along SANE said maybe that is not too sane either, so let us have a sane policy over there in Vietnam. That is what it stands for. It has been shortened to SANE.

Mr. SMITH. Was it originally a group of scientists?

Mr. WELLS. Yes; primarily going along in support of the nuclear test ban treaty.

Mr. SMITH. Originally, an organization of scientists, I believe, was it not?

Mr. WELLS. It had a lot of scientists in it who were very much concerned about the U.S. nuclear policy.

Mr. SMITH. But this is no longer one of the qualifying requirements of membership, I take it?

Mr. WELLS. No; let me state we are perfectly willing, glad, and willing to receive anyone who supports the policies of SANE, and willing to contribute just a little bit. We would like for them to come along, and we invite you to join with us. We think it would be wonderful if you could.

Mr. SMITH. Reverend Wells, would SANE—I did not have a chance to read the policy statement except as you spoke about it in general terms. Would your organization be in favor of or against alternative service by those to whom amnesty might be granted?

Mr. WELLS. I personally, and I think I speak for SANE, would be opposed to alternative service in the sense that once again, as it has been stated very eloquently here already, that to say you must serve is really a justification for a war that many people, including many Mem-

bers of Congress, thought was never justified to begin with. Therefore, I would be very much opposed to alternative service.

Let me put it this way. I worked with Brad Morse for quite a while, the former Congressman from the 5th District of Massachusetts here on the Hill. He said one time, "John, let me tell you something, no bill is a good bill that will not pass."

I was over at Camp 30 last night, which is a prison in Virginia, and if it were possible to get one of the guys there I was working with to go to a drug rehabilitation program, I would rather get him to the drug rehabilitation program because they are better than the jails.

I am unalterably opposed to what is happening in our jails. If these kids out of conscience chose not to fight in a war, to put them in a hospital somewhere, I would say I would prefer to see them there if that is the only way, but I am unalterably opposed to the whole concept of validifying the war in Vietnam that I personally think was wrong to begin with, and I think many people in Congress had great qualms about it themselves. I do not feel this, I know they did. Just ordinary people, and particularly the less sophisticated, those are the ones who did not have the draft counseling, who did not have the ability to stay in school a long time, and so they left the military and split so they will get a bad conduct discharge. I would like to see them all get their discharges back and get at the very least a general discharge. There is the honorable discharge, the general discharge, the bad conduct discharge, a dishonorable discharge, and the one in the middle. Anyone for Air Force Regulation 1917?

I was in the Judge Advocate's office; so I was a regular officer. I served 8 years. The gentleman who said those who served 4 years would be upset.

I am not for the alternative service, sir.

Mr. SMITH. But you say you would take it if you had to, to get some kind of a bill?

Mr. WELLS. Once again, I am only listening to the wisdom of a friend of mine, Hon. Bradford Morse, and he did teach me that a bill that will not pass is no good. But I would be opposed to it up to the very last moment, only because I know there are a lot of kids in jails, and I spend a lot of time visiting jails, and they do not show me very much.

Mr. SMITH. Thank you very much.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. I want to thank you for your moving statement. You mention in it that this country wants to have a healing and it needs it, and when we talk about divisiveness today there is the hope more than ever that we can come together and have the healing process.

Based on that, then, why when we see the polls toward unconditional amnesty, how come they are at least to date so much against it?

Mr. WELLS. One reason, they do not understand it. Last night I was talking to a guard over at prison and I asked him this question. I knew I would be here today and I asked him. I said, "Are you in favor of this?" And he said, "No." Rather than argue with him I sat down and told him about the Whiskey Rebellion or the War of 1812 when Madison said, "Hey, you guys come on back and join your

troops and I will forget it," or Lincoln or Johnson. You see, he did not know this.

This is the difficult thing we do not get across. You in Congress need a way to get your message across to the people. It is hard to get across to the people that this country has been built on the fact of reconciliation. It has been built on the fact we do not hold grudges. It has been built upon the fact that we can forgive and also that we can have differences and understand and love each other. That is the strength of this country. When you go in and say you are going to let these draft dodgers get out of this and so on, there is an automatic reaction. I know you understand, I know the people will understand when you lead them to what is happening. We could really get into a real hodge podge, but I believe this is the call to Congress, to the whole legislative process, right now. It is incumbent upon the Congress to lead. That is my explanation for it.

When I first introduced that bill that Father Drinan was talking about, everybody told me I was a big fool, it did not have a chance of passing, but we went out and told people and it passed.

Mr. MEZVINSKY. Thank you. I certainly appreciate your comments. Thank you.

Mr. KASTENMEIER. Thank you, Reverend Wells, for your contribution this morning.

Mr. WELLS. Thank you for the opportunity to be here.

Mr. KASTENMEIER. This concludes the morning session of our hearings.

I would like to announce that we will try to reconvene at 1:45 p.m. In the event I am not present, I have requested and authorized the gentleman from Massachusetts, Mr. Drinan, to reconvene the afternoon hearing at that time. Our first witness will be Senater Ernest Gruening.

Until that time, the subcommittee stands in recess.

[Whereupon, at 1:05 o'clock p.m., the hearing was recessed, to reconvene at 1:45 p.m., this same day.]

AFTERNOON SESSION

Mr. DRINAN (presiding). The subcommittee will please come to order for the afternoon session on the question of amnesty.

I am very pleased and honored by the presence of our first witness this afternoon, Senator Ernest Gruening. He is one of the foremost statesmen of our time. He began his career, as do so many distinguished people, in Massachusetts. He graduated from the Harvard Medical School and was a crusading journalist in Boston.

He has given an enormous number of years to Government service. During the First World War Senator Gruening helped organize the War Trade Board Bureau of Exports. He was adviser to the Seventh Pan American Conference at Uruguay for President Roosevelt where he took part in implementing the Good Neighbor Policy he had long fought for.

In 1934 President Roosevelt appointed him Director of the Division of Territories, and he served as the Governor of Alaska from 1939 to 1956. In 1958, grateful Alaskans sent Senator Gruening to the U.S. Senate to represent them for a long number of years.

Senator Gruening, along with one other Senator, protested originally against the Tonkin Gulf Resolution, and has always protested this country's involvement in the Vietnam war.

I think it is fair to say—and I recommend to all of you—this is a commercial for your book, Senator—the Senator's most recent volume, his autobiography, "Many Battles." I think it is fair to say, as the Alaska Legislature has said, when passing by unanimous vote a resolution commending his recent nomination for the 1974 Nobel Peace Prize, that Senator Gruening is a man for all seasons and a man for all Americans.

Senator Gruening, we welcome you, and we are honored to have you speak to this committee.

TESTIMONY OF FORMER U.S. SENATOR ERNEST GRUENING

Mr. GRUENING. Mr. Chairman, in my written statement, which I want to summarize, I outlined my view of our history of our involvement in Southeast Asia, which was a continual history of deception, mendacity and inexcusable aggression.

I pointed out that this war was entirely different from previous wars which we engaged in, such as World War I or World War II, both of which I supported. In fact, I was in uniform in World War I. But this was was entirely different. We had not been attacked, and there were no vital interests of the United States as I saw it, that were in jeopardy. We merely barged into a civil war, and we did it by elaborate mendacity, particularly through the Tonkin Gulf incident.

I think it is occasionally important to recall that incident by pointing out that on the night of August 4, 1964, Lyndon Johnson went on nationwide television and told the American people that on August 2, an American destroyer on a routine patrol in international waters had been wantonly and unprovokedly attacked by North Vietnamese P.T. boats, and he felt that it was necessary to counter that. He said he ordered a second destroyer to accompany the first, and the attack was repeated the second night. He felt that this required a response; and, therefore, he ordered a retaliatory attack by airplanes from the fleet on the bases from which these boats had emerged, and he had a resolution drafted which he would present to the Congress which would give him the power to prevent such future acts of aggression.

The story was completely false. The destroyer *Maddox* was not on a routine patrol in international waters. She had penetrated the coastal waters of South Vietnam. She was a spy ship. She had been equipped the week before with elaborate electronic devices, and actually she was doing this at a time when South Vietnamese vessels supplied by the United States with crews trained by the United States were actually attacking North Vietnamese ports. So that while we were alleging aggression, we were actually practicing it.

The President had gathered a group of Senators and Congressmen in the White House early that afternoon several hours before he made this nationwide address, to give them the same false version of what had happened. But he did not tell them that several hours earlier, a telegram had been received from the captain commanding the *Maddox*, Captain Herrick, who in the interval between the 2d and the 4th had been promoted to be commodore. And this telegram made very clear that the attack was very doubtful.

This was the telegram. And I think it is important to get into every record of the war.

Review of action makes many recorded contacts and torpedoes fired appear doubtful. Freak weather effects and overeager sonar men may have accounted for many reports. No visual sightings by *Maddox*. Suggest complete evaluation before any further action.

That telegram was suppressed. The Senators and Representatives were not allowed to see it. Had they known of this telegram, of course, they would not have voted for the Tonkin Gulf resolution. They would have said, the one man who knows what has happened and what has not happened says, halt it. It is doubtful whether there were any such attacks. But that was not only concealed from the Senators and Representatives meeting at the White House on August 4, it was concealed from the entire Senate and the entire House during the next 3 days while we were debating. Consequently, the House voted for the resolution unanimously, believing President Johnson's version, and the Senate voted for it 88 to 2, with the 10 missing Senators recorded in favor of it.

We were lied into this war. And these kids may not have known all these details, but they knew it was not a war of defense, they knew it was not a war which was justified, and so they refused to go.

And so I would outline briefly what I feel about those who resisted the draft, and those when they went down there felt they could no longer stomach it and left. I will read this.

The young men who refused to be drafted may not have known all the details of the mendacity and the deliberate deception that plunged our country into this war. But they felt deeply that this was not a war of defense of our country, that we had not been attacked as we had been by the Japanese at Pearl Harbor, that no vital interests of the United States were involved, but that we had barged in unmasked into a civil war that was none of our business. I know how they felt, because in talking to students at various colleges, as the draft moved closer to them they would assure me with deep sincerity that if this were a war of defense of our country, they would go willingly. But not into this war, in which, while constantly alleging that we were fighting aggression, we were in fact the aggression. So they refused to go.

And far from being penalized, they should be honored for their wisdom and their true patriotism. They are the unsung heroes of this war.

But for those who swallowed any reservations they may have had, and did not resist the draft, and went, it is clear that when they got into Southeast Asia and saw the masacre of innocent non-combatants, the burning of women and children with napalm, the saturation bombing which destroyed homes, hospitals and white families, making homeless refugees of those who were not killed, turned the land in a defoliated and cratered wasteland, these non-resistant draftees could no longer stomach these atrocities, and would no longer participate in this massive butchery, and deserted. They do honor to America, shamelessly misled and betrayed by its leadership. Their desertion was infinitely preferable to their staying on. They were betrayed by their leadership.

My conviction in this matter I have formed when I view this war and the U.S. participation in it as wholly different from our entry into World Wars I and II, which I then consider and now consider fully justified, were crystallized by a scenario of horrors at the third Amer-

ican war crimes hearings in Copenhagen in 1972. Among them was a 24-year-old school teacher. Her right arm was gone. Fragments of the bomb that hit her school had torn it off. The same bomb killed six of the children outright and crippled 10 others for life. They are typical of the U.S. legacy in Southeast Asia—armless, legless children, or children paralyzed by fragments striking their brain or piercing their spinal cord. Some of them cannot even use crutches, but must crawl about like four-footed animals on hands and knees.

The men who refused to participate any longer in these atrocities, after agreeing to serve, should be granted immediate amnesty, and with it a declaration of appreciation for their decency and humanitarianism. How shameful that they should be headed for imprisonment with the approval of an Administration that has harbored more convicted criminals than ever before constitutional a President's entourage. I want to repeat that.

Amnesty is opposed by an Administration that harbors more criminals than ever before disgraced an Administration. I think that is an understatement. I have not researched it, but I think if you will list all the criminals that took part in previous Administration, the Grant Administration and the Harding Administration, their number will not total up the number in this Administration. And this is the Administration that does not want to give these people amnesty. Most of these criminals in the Administration have been associated with President Nixon for years, and have had the opoprtunity to profit by his example and guidance.

How shameful when men in high places who have committed felonies in their responsible posts escape with a slap on the wrist, a fine, instead of the full imprisonment terms they deserve.

The U.S. must unfortunately forever bear the shame and stigma of a wholly unjustified war of aggresion into which our leadership tricked us, and would have continued the slaughter but for Congressional action which stopped the war last August 15th and forbade further use of our military in Southeast Asia.

But we can make partial amends by freeing those who knew right from wrong and refused to continue to participate in a monstrous and criminal policy.

So I am hopeful and strongly urge that the Congress promptly pass legislation granting unconditional amnesty to both the war resistors and the deserters.

Let them follow Abraham Lincoln's example when he pardoned both deserters for the Union and the Confederates who had been captured. Thank you.

Mr. DRINAN. Thank you very much, Senator Gruening, for that most eloquent statement. Your entire statement will be placed in the record at this point.

[Mr. Gruening's statement follows:]

STATEMENT OF SENATOR ERNEST GRUENING

In order to justify my support for immediate and unconditional amnesty for those who resisted the draft in the United States armed forces for the undeclared war in Indochina, and for those who, having accepted enlistment, later deserted, I think it essential to look into the history of United States motivation for its military participation and its proclaimed justification for it. It is in that history that may be found the justification for amnesty.

In the eighteenth and nineteenth centuries the great powers of Europe, France, Germany, the Netherlands, Spain, Portugal, Great Britain, moved their armed forces into the less developed areas of the world, Africa, Asia, South and Central America, conquered their inhabitants and carved out colonies for themselves. But after centuries, and sometimes after only decades of this colonial rule, the colonial inhabitants of these old-world colonies sought independence and freedom. The American Revolution in the last quarter of the eighteenth century was one of the first of these revolutions although it differed from the other revolts against old world domination in that Britain had never conquered that part of America which became the United States.

In the late nineteenth century the French moved militarily into Southeast Asia and by force took over the formerly independent nations of Vietnam, Laos and Cambodia, nations with an ancient culture and civilization, and united them in one colony which they called Indochina.

Revolt against old world domination and colonialism gathered momentum in the twentieth century, and in the middle nineteen-forties—a little more than a quarter of a century ago—the colonial inhabitants of Indochina raised the standard of revolution against their old world master, France. Their motivation was precisely that of our colonial forbears who raised the standard of revolution against Britain. But their cause was even clearer than that of the thirteen colonies in that Britain had never conquered America and had not taken over the thirteen colonies by force as had France in Indochina. Our forefathers just wanted independence and the determination of their own destiny. So likewise did the Indochinese.

However, France wanted to hang on to its colony. Their generals, Navarre and Lattre de Tassigny, felt they could not suppress the revolution and the French government asked the United States to supply military aid. One might have assumed that in view of our past history, of our freedom resulting from severance of old world domination, France's request would have been rejected outright. However, President Eisenhower considered it. He was urged by his Vice-President, Richard Nixon, to accede to the French request and send our troops into that war, and the French request was also supported by some of our military leaders, including the late Admiral Arthur Radford, Chairman of the Joint Chiefs of Staff, but opposed by others, notably General Matthew Ridgway, Army Chief of Staff, who shared General Douglas MacArthur's publicly expressed view that "anyone who counsels our getting into a ground war on the continent of Asia ought to have his head examined."

After considering the French request, President Eisenhower found he could not get the approval of Congress—whose constitutional role in war-making *he* respected—nor could Eisenhower get the support of our late World War II ally, Great Britain—Winston Churchill was opposed to any joint military venture—so President Eisenhower refused to send troops into combat, but he did give the French substantial financial aid—one billion, two hundred million dollars, four times the amount the French put in—before the French defeat at Dien Bien Phu—and a military mission of 600 men designed to train native troops to fight for the French. These American military were the entering edge of our involvement in the war. When the Indochina revolutionaries found our men fighting with and for their colonial masters they viewed them as enemies, and they became our first casualties. When American blood is split there will always be an urge to retaliate.

That urge was behind President Kennedy's sending several hundred helicopter pilots to Vietnam to help put down the Revolution. This was not frankly admitted. They were labelled advisers, because the Geneva Accords forbade its supporters to send troops into the Indochina war.

The Geneva Accords arose from a meeting of nine nations after the French defeat. They provided that out of the former French colony, three previously independent nations, Vietnam, Laos and Cambodia, would recover their independence as sovereign nations.

Campaigning for election after President Kennedy's assassination, Vice President Lyndon Johnson promised the American people he would never send American boys to Southeast Asia to do the fighting that Asian boys should do for themselves. Then came the Tonkin Gulf incident.

On the night of August 4, 1964, President Johnson went on nation-wide television and told the American people that two nights previously, on August second, an American destroyer, the Maddox, on a routine patrol in international waters,

had been wantonly attacked by North Vietnamese P.T. boats; that he had ordered a second destroyer to accompany the first, and that both destroyers had again been deliberately and wantonly attacked on the night of August fourth; that he felt such unprovoked attacks required a response, and so he had ordered planes from our aircraft carriers to bombard the ports from which the North Vietnamese vessels had come, and that he had a resolution drafted which he would present to Congress that would enable him to prevent such acts of aggression in the future.

Johnson's story was false. The Maddox was not on a routine patrol in international waters. She had penetrated the coastal waters of North Vietnam. She was a spy ship, and the week before had been fitted out with elaborate electronic equipment. Moreover, she was performing at the very time when South Vietnamese vessels, supplied by the United States, with crews trained by the United States, were attacking North Vietnamese ports; so that instead of the United States being the victim of aggression, it was actually the aggressor.

The resolution which the President had had drafted gave him the authority to use the armed forces of the United States anywhere he saw fit in Southeast Asia, and he laid the resolution before a group of Senate and House leaders he had asked to meet with him at the White House where he gave them the same false version of the Tonkin Gulf incident he would later that evening give the American people over television.

What he did not tell the assembled Senate and House leaders was that several hours previously a telegram to Secretary of Defense Robert McNamara had been received from Captain Herrick, commander of the destroyer Maddox, who with the addition of the second destroyer (the C. Turner Joy) had been promoted to commodore and to the command of both destroyers. The telegram read as follows:

"Review of action makes many recorded contacts and torpedoes fired appear doubtful. Freak weather effects and overeager sonar men have accounted for many reports. No visual sighting by Maddox. Suggest complete evaluation before further action."

In other words, the one man uniquely qualified to state what had happened on the nights of August 2 and 4, said that it was doubtful whether any attack had occurred; that there had been no visual sightings of torpedoes or hostile vessels, and suggested complete evaluation before any further action.

That telegram had reached Johnson hours before his meeting with the Congressional leaders. Yet he suppressed it. Needless to say, had they known of it they would never have voted for the resolution. They would have said: "Let's find out what happened." But they did not know of Commodore Herrick's telegram and it was likewise concealed from all members of Congress during the next three days when both Houses were debating it. So the nation was deliberately tricked into the longest, costliest, most needless of all our wars.

For, not knowing the truth and believing President Johnson's version the House passed the Tonkin Gulf resolution unanimously and the Senate 88 to 2, with the ten absent Senators recorded in favor.

How did we find out what really happened on the nights of August 2 and 4, 1964? It came about because Senator Fulbright had a change of heart. As floor manager for the resolution he had urged its speedy passage. He had declined to accept an amendment offered by Senator Gaylord Nelson which sought to prevent the sending of our armed forces into Southeast Asia by expressing the Senate view that the resolution implied no change of U.S. policy which had been only to send arms and advisers. Fulbright took the position that the resolution spelled no change in U.S. policy and was merely a gesture of support of the President. But when in subsequent months he saw our troops moving across the Pacific first by thousands, then by tens of thousands and then hundreds of thousands, he realized he had been deceived and had unwittingly mislead his colleagues. So in 1968 he reconvened his Foreign Relations Committee, held hearings at which the participants in the Tonkin incident testified and it became clear that no attacks such as President Johnson had charged had taken place, and that a resolution giving President Johnson the authority to use troops anywhere in Southeast Asia had been drafted months before the Tonkin incident—drafted by Assistant Secretary of State for Far Eastern affairs, William P. Bundy.

The official deception continued. Addressing the Congress on January 4, 1965, President Johnson said:

"Why are we there? We are there, first, because a friendly nation has asked us for help against Communist aggression. Ten years ago the President pledged our help. Three Presidents have supported that pledge. We will not break it now."

That statement was also false. There had been no request for help from our puppet, Diem, whom we had installed in Saigon. The only request he had made was to help move some Vietnamese from the north to the south, and President Eisenhower had promised only economic aid and that dependent on reforms that never took place.

President Johnson repeated that falsehood three months later at Johns Hopkins, saying:

"We are there because we have a promise to keep. Since 1954 every American President has offered support to the people of South Vietnam. Thus over many years we have made a national pledge to help South Vietnam retain its independence. I intend to keep that promise. To dishonor that pledge would be an unforgiveable wrong."

In addition to repeating the previous falsehood, the statement disclosed another breach of faith by our administration, when he alluded to South Vietnam and our help to retain its independence. The Geneva Accords had provided that the three former independent nations, Laos, Cambodia and Vietnam would be restored to independence. In the case of Vietnam the country would be temporarily divided for purposes of demobilization at the 17th parallel, but that before the end of two years, nation-wide elections would be held to determine who would rule the whole country. The United States reneged on that commitment. Why? Because it was clear that if elections were held, Ho Chi Minh, a popular idol, would be elected President and he was a Communist. What our policy-makers chose to ignore was that Ho Chi Min was first and foremost a nationalist, seeking the independence of his country and opposing all foreign domination, whether French, Chinese, Japanese or American. In fact he had aided the United States in expelling the Japanese from Southeast Asia during World War II, and he proclaimed his aspirations in the same terms as our revolutionary forebearers. But the assumption of our government at that time was that if Ho Chi Min were elected all Vietnam would become a communist state and that that had to be prevented at all costs. This fear had been ingrained in U.S. policy by the "fall" in 1949 of China to the Communists and the resulting departure of Chiang-Kai-Chek to the island of Formosa, which, now renamed Taiwan, became the China the U.S. recognized.

So the United States, in violation of its promise to support the Geneva Accords, by fiat and force recognized and created South Vietnam as an independent nation and has ever since supported a succession of corrupt and tyrannical rulers who have practiced all the repressions that we attribute to the Communists. So the anti-colonialism that should have been U.S. policy was displaced by anti-communism.

So instead of allowing the colonials to carry on their revolution for independence, freedom and self-determination, the United States moved in militarily to oppose them. It did so because U.S. leadership was in the grips of an anti-communist phobia, viewing Russia and China as a monolithic menace to the free world. The "fall of China" re-enforced that fear, under the spell of which John Foster Dulles' "domino theory" shaped United States policy. If Vietnam fell, Laos, Cambodia and Thailand would fall; Communist forces would sweep across the Pacific, taking over the Philippines, Australia, New Zealand, Hawaii, and we'd be fighting them on the beaches of California. That fantasy determined United States policy. And so, as I have pointed out, the United States, with no legal justification whatever, by fiat and by force created an independent South Vietnam. That is what the continuing war has been about ever since and still is.

Now, the young men who refused to be drafted may not have known all the details of the mendacity and the deliberate deceptions that plunged our country into this war. But they felt deeply that this was not a war of defense of our country, that we had not been attacked, as we had been by the Japanese at Pearl Harbor, that no vital interest of the United States was involved but that we had barged in, unasked, into a civil war that was none of our business. I know how they felt because in talking to students at various colleges as the draft moved closer to them, they would assure me with deep sincerity that if this were a war of defense of our country they would go willingly—but not into *this* war in which while constantly alleging that we were fighting aggression we were in fact the aggressors. So they refused to go, and far from being penalized they should be honored for their wisdom and their true patriotism. They are the unsung heroes of this war.

But for those who swallowed any reservations they may have had, did not resist the draft, and *went*—it is clear that when they got into Southeast Asia and saw the massacre of innocent noncombatants, the burning of women and children

with napalm, the saturation bombing which destroyed homes, hospitals and whole families, making homeless refugees of those that were not killed, turned loose in a defoliated and craterized wasteland—these nonresistant drafters could no longer stomach those atrocities, would no longer participate in this massive butchery, and deserted. They do honor to an America shamelessly misled and betrayed by its leadership. Their deserting was infinitely preferable to continuing as killers and maimers of a people against whom the United States has no grievance whatever.

My convictions in this matter, early formed when I viewed this war and United States participation in it as wholly different from our entry into World Wars I and II which I then considered and now consider fully justified, were crystallized by a scenario of horrors at the third American War Crimes hearings in Copenhagen in 1972. Among them was a 24 year old school teacher. Her right arm was gone. Fragments of the bomb that hit her school had torn it off. The same bomb killed six of the children outright and crippled ten others for life. They are typical of the U.S. legacy in Southeast Asia, armless, legless children or children paralyzed by fragments striking their brain or piercing their spinal cord. Some of them cannot even use crutches but must crawl on hands and knees.

The men who refused to participate any longer in these atrocities should be granted immediate amnesty and with it a declaration of appreciation for their decency and humanitarianism. How shameful that they should be headed for imprisonment with the approval of an administration that has harbored more convicted criminals than ever before constituted a President's entourage. Most of these had been associated with President Nixon for years and had had the opportunity to profit by his example and guidance.

How shameful when men in high places who have committed felonies in their responsible posts escape with a slap on the wrist—a fine, instead of the multiple prison terms they deserve. The United States must unfortunately forever bear the shame and stigma of a totally unjustified war of aggression into which our leadership tricked us and would have continued the slaughter but for Congressional action which stopped the war last August 15 and forbade further use of our military in Southeast Asia. But we can make partial amends by freeing those who knew right from wrong and refused to continue to participate in a monstrous and criminal folly.

So I am hopeful and strongly urge that the Congress promptly pass legislation granting unconditional amnesty to both the war resisters and deserters. Let them follow Abraham Lincoln's example when he pardoned both deserters from the Union cause and the Confederates who had been captured.

Mr. DRINAN. Before I yield to Congressman Smith of New York, I would like to ask whether you would have any suggestions as to the carrying out or the implementation of your recommendations in legislation. Many bills are before us, as you know. I wonder if you have any thoughts on that to complete your statement.

Mr. GRUENING. I notice numerous bills that are slightly different. I believe that unconditional amnesty should be granted by the Congress. I do not believe in compensatory service. I think these men followed their consciences. And I think history will increasingly prove them right, and those who plunged into this inexcusable war, wrong. I think public sentiment is growing. But prejudice can easily be aroused by referring to them as draft dodgers and slackers and using phrases of that kind.

I think it took real courage for a man to refuse to go. He realized that he was risking imprisonment, and I think it took just as much courage, if not more courage, when a man had gone and saw what he saw and said, I cannot stomach this any more, this is nauseating, and got out. And I feel very definitely that there is a chance for the United States to redeem its own policy by recognizing that following one's conscience is perhaps the highest law.

And when you see what is happening down there now, and how this war which Richard Nixon promised he would stop—said he would

stop it in fact 14 months ago—and he has not stopped it, it is the Congress who stopped it—said he had ended the war with honor, and nothing could have been more devoid of honor than the continued bombing of Cambodia concealed from the American people, the saturation bombing of North Veitnam, and the complete violations by our administration of the ceasefire provisions which were drafted about 14 months ago. So the whole thing was dishonorable from start to finish, and continues to be dishonorable. And if the Congress has the guts to put an end to this policy, which is both very costly physically and in matters of morality, by which we continue to subsidize these crooked dictators like Nguyen Thieu and Lon Nol and continue the killing—in other words, Richard Nixon is now trying to do with money, with dollars, and with civilians, what Congress has forbidden him to do with military men. And it is a disgrace. And this goes back to the whole issue. As I said, these draft resisters or deserters were not people who had a lack of conscience. They were not trying to evade a responsibility. They felt they had a higher responsibility. And that was the responsibility not to engage in an utterly indecent, immoral, unjustified, and undeclared war.

Mr. DRINAN. Thank you very much, Senator Gruening.

I yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Senator, I just wanted to say thank you for coming here and giving us your statement today. Thank you very much.

Mr. GRUENING. It is a pleasure to be here.

I think this is one of the many causes which the Congress has got to concern itself with. There are many changes we have got to make in consequence of the betrayal that has taken place in our great heritage in the last 5 years. And this is certainly one of them.

Thank you very much.

Mr. DRINAN. Thank you very much, Senator Gruening.

Our next witness is a speaker who represents the American Legion. I now call upon Mr. Herald D. Stringer, the director of the National Legislative Commission, the American Legion, to introduce the people who will be our next witnesses.

Mr. Stringer.

TESTIMONY OF HERALD E. STRINGER, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. STRINGER. Mr. Chairman and members of the subcommittee, the American Legion is here today at the committee's invitation to present its views on the subject of amnesty. Our membership is deeply concerned with this problem, and we appreciate the opportunity of testifying in accordance with our mandate.

With your permission, Mr. Chairman, I would like to introduce Mr. James R. Wilson at the end of the table, the director of our national security commission. This is the program commission within the Legion having jurisdiction over this subject.

Our witness this afternoon, Mr. Chairman, is Mr. James F. O'Neil, a past national commander of the American Legion, and the publisher of our Legion magazine. Mr. O'Neil is qualified to speak on the subject of amnesty, having been a member of the Amnesty Board appointed by President Truman following World War II. He is here at the table with me and prepared to present our formal statement.

Mr. DRINAN. Thank you very much.

Mr. O'Neil, you may proceed as you like. It is nice to have you here.

TESTIMONY OF JAMES F. O'NEIL, PAST NATIONAL COMMANDER, THE AMERICAN LEGION; ACCOMPANIED BY HERALD E. STRINGER, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION, AND JAMES R. WILSON, DIRECTOR, NATIONAL SECURITY COMMISSION, THE AMERICAN LEGION

Mr. O'NEIL. Mr. Chairman and members of the subcommittee, I deeply appreciate the opportunity and the invitation to present the views of the American Legion on the question of Executive clemency for those who have failed to comply with the statutory and regulatory requirements of the Selective Service Act and those who deserted from military service during the Vietnam war.

For the record, our current membership approximates 2,700,000 honorably discharged former servicemen and women of World War I, World War II, Korea, and Vietnam. With the exception of World War II, the largest segment of our current membership base their eligibility on Vietnam-era service.

While the reasons for belonging to our organization are many and varied, all of our members have a concern for our Nation's well-being, particularly in the area of national defense. This concern has, from the Legion's beginning in 1919 following World War I, manifested itself in the resolutions annually adopted at its national conventions.

Today my appearance and the position I take on amnesty are based upon resolution 41 adopted at our 1973 national convention. A copy of this resolution is appended to this statement and I respectfully suggest that it be made a part of the official records of these hearings.

Mr. DRINAN. Without objection, it is so ordered.

[The resolution follows:]

55TH NATIONAL CONVENTION OF THE AMERICAN LEGION HELD IN HONOLULU, HAWAII, AUGUST 21–23, 1973

Resolution No. 41.
Committee: National Security.
Subject: Draft evaders and/or deserters.

Whereas, the majority of young men called to military service through the Selective Service process accepted their responsibility and served their country in time of need; and

Whereas, a minority of young men chose not to accept their responsibility and through defiance of the law and disregard of the manpower needs of their country, dodged their obligation by leaving the United States to seek sanctuary in other countries; and

Whereas, many of these men and others who deserted from the military are residing in other countries but desire to return to the United States if prosecution and punishment can be avoided as they avoided their citizen's duty; and

Whereas, some politicians, some members of the judiciary, news media, clergy and other organizations and agencies are advocating general amnesty or a "second chance" program for these expatriates; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Honolulu, Hawaii, August 21–23, 1973, that we go on record as opposing any attempt to grant amnesty or freedom from prosecution to those men who, either by illegally avoiding the draft or deserting from the armed forces, failed to fulfill their military obligation to the United States and that each case should be reviewed under existing procedures available to the courts and the President; and be it further

Resolved, that The American Legion request prosecution to the full extent of the law anyone guilty of either of the aforementioned violations.

Mr. O'NEIL. The delegates who unanimously adopted resolution 41 represented every one of the 50 States and the District of Columbia. They were all honorably discharged veterans of wartime service and represented a cross section of American ethnic, cultural, political, and economic life. Resolution 41 also has the unanimous support of the American Legion Auxiliary whose nearly 1 million members are the wives, mothers, sisters, and daughters of men who served their Nation.

Like you, we Legionnaires continue to be concerned over the complex problems presented by the issue of amnesty. It has some emotional aspects with overtones of justice tempered with mercy and understanding.

Let us hope that as a result of these hearings, earnest and full consideration will be given to all facets of the issue of executive clemency so that we shall be able to discover and follow that difficult line between the dictates of the law and the charity our moral heritage demands.

The American Legion has an intense and direct interest in amnesty because our members all were subject to the laws, regulations, pressures, and responsibilities of military service in defense of the United States and most also were subject to the operation of the Selective Service System.

We believe that we have a real and vital stake in this issue since it concerns basically the rights and responsibilities of the citizen to bear arms in the defense of his Nation. In 1783, Gen. George Washington expressed clearly the responsibility of citizenship which I believe goes to the heart of the proposition under discussion. Washington said:

> It may be laid down as a primary position, and the basis of our system, that every citizen who enjoys the protection of a free Government, owes not only a portion of his property, but even of his personal services to the defense of it.

Proponents of amnesty at the present time fall into two categories. One group advocates unconditional amnesty for all military deserters and draft evaders. This group reasons that the Vietnam conflict was an immoral war for the United States; that those who recognized this and followed their conscience ought not suffer any legal penalties for being right while their country was wrong; and, therefore, amnesty should be a blanket recognition of this.

Some spokesmen for this view go so far as to advocate full veterans rights and pensions for deserters and draft evaders from their sufferings in Canada, Sweden and elsewhere. The second group of proponents offer amnesty to draft evaders but not to military deserters, provided that draft evaders prove their sincerity by performing alternate service for their country.

The American Legion believes that most draft evaders and deserters consciously decided to refuse to accept their responsibilities as citizens under the law; that they evaded their responsibilities by flouting our laws and legal remedies rather than by going through the available, legal channels of redress; that their actions in declining to obey certain laws distasteful to them is contrary to sound legal and moral standards; and that the obligations of citizenship cannot be applied to some and evaded by others.

The amnesty question is clouded with a vast amount of printed material, which, if true, suggests that everyone is groping in the dark on this subject and that almost anything except referring it to our normal system of justice would be a risk. There have been reports

in the press of a considerable amount of law-breaking and crime among expatriate draft evaders or deserters in Sweden. I am not an expert on the subject, but these reports seem to be consistent with the experience of the Amnesty Board that considered the 15,805 violators of the Selective Service law in World War II. It is a further warning that no one policy except to hear every case may be a wise one.

As I told a Senate hearing on this same subject about 2 years ago, "It is unfortunate that I am the only surviving member of the Amnesty Board appointed by President Truman." The other members were Chairman Owen J. Roberts, then a recently retired Justice of the Supreme Court, and Willis Smith, then president of the American Bar Association and later a U.S. Senator.

Because of what I believe to be important to these proceedings, I cite two experiences. At the very outset, the question of a general or blanket amnesty was raised by Justice Roberts, who indicated some support. After some discussion it was resolved unanimously to proceed with an examination of each case and determine our recommendations on merit.

In submitting the report 1 year later, Chairman Roberts referred to this situation by explaining to the President he was glad that such a decision was made, adding that "I never realized there were so many who were not entitled to amnesty."

The American Legion resolved that:

> We go on record as opposing any attempt to grant amnesty or freedom from prosecution to those men who, either by illegally avoiding the draft or deserting from the armed forces, failed to fulfill their military obligation to the United States and that each case should be reviewed under existing procedures available to the courts and the President; furthermore, The American Legion requests prosecution to the full extent of the law anyone guilty of either of the aforementioned violations.

In other words, we of the American Legion firmly believe that giving any wholesale amnesty—whether conditional or unconditional—would make a mockery of the sacrifices of those men who did their duty, assumed their responsibilities in time of conflict and—in some cases—were killed or seriously wounded.

Furthermore, what would be the effect on the morale of our Armed Forces if amnesty were granted to those who have violated the law and their oath of service by turning their backs and fleeing their country? In our opinion, it could only badly undermine that morale and cheapen the value of honorable service to one's country—at the very moment these values are most in need of strengthening.

It is clear from the Legion's resolution that our official opposition to amnesty is not a total opposition to it, but an opposition to any sort of amnesty (with or without conditions) to all draft evaders as a class. Our resolution asks that all draft evaders be prosecuted. This means that we would like each case to be heard in court, and tried on its merits. The courts can deal with the particulars of each case, and exercise leniency or sternness, based on the actual facts brought out in hearings about each particular draft evader. Surely the courts will find some who are innocent, and some who should be excused without any further conditions.

It is also implicit in our resolution that those found guilty would still have open to them the right of appeal. Should appeal fail, they would have recourse to the President's pardoning power if, on review

of the facts in each case, he wishes to extend additional leniency beyond what the courts may extend. This is implicit in our resolutions because any request for prosecution implies not only the possible findings of guilt but the finding of innocence, and the avenues for redress, appeal and pardon are available to all persons who are prosecuted.

Our request that draft evaders be prosecuted does not deny to them their full rights under the law, or the opportunity for Executive clemency. Our resolution, in effect, opposes any form of blanket amnesty, and asks that each case be considered on its merits. The only other example in or history of amnesty for wartime draft evaders certainly bears out the wisdom of this approach—and, of course, it is consistent with the whole American system of justice which is based on hearing the charges and the facts of each case.

There are some in this country who would create the illusion that every Vietnam draft evader was acting on high principle out of deep-seated convictions against the war. When all cases were judged individually after World War II, nearly half were found to have been men wanted for murder, robbery, desertion of their families and other serious crimes.

On the other hand, others were found to have been legally exempt from military service, or they fell afoul of the law through ignorance or illiteracy. President Truman gave a complete pardon to 1,523 and a conditional one to 1,518, while more than 12,000 did not merit such treatment.

If the Vietnam draft evaders are all prosecuted, courts will be able to judge each case on its merits. They will again find a mixture, in my opinion, of victims of error, deliberate conspirators, and professional criminals. The President could then have them screened and consider recommendations for clemency in each case.

An act of Congress to provide an across-the-board stint of Government service in exchange for amnesty would offer that penance to some for whom it is too heavy a penalty and to others for whom it is too mild a punishment. The most flagrant offenders will get the best break and the least offenders the worst.

This is hardly equal justice under the law. At least 10 Presidents, from Washington to Truman, have handled the amnesty question under existing machinery. An act of Congress that decides all cases without a hearing is neither necessary nor desirable.

I do draw the conclusion from them that the whole amnesty question movement is groping in such darkness that for Congress to rush into an amnesty enactment would be inadvisable on the general principle that acts of Congress should be based on sound conclusions drawn from sound information.

The number of draft evaders affected is often set in the press at 70,000. But the Defense and Justice Department reports repeatedly put it at a much lower figure, if we are talking about men who might face prosecution in the normal run of things.

Numbers are not important to justice, but the figure of 70,000 is often cited in support of a need to grant a general amnesty to "reunite the Nation." That reasoning seems to be that such a large number of people is significant, purely on the basis of numbers and without regard to their individual acts.

But it would seem to me that the whole argument about "reuniting the Nation" is one we should avoid. Certainly many persons would be embittered by a blanket amnesty. It could result in a more divisive Nation. How can amnesty be equated with those who served and the families of those who gave their lives in Vietnam as a result of obeying the laws enacted by Congress? "The reunifying the Nation" argument does not deal with justice at all.

A further complication, based on press reports, is that some of the men for whom blanket amnesty is proposed are themselves contemptuous of it. The Congress was not complimented when these men chose to defy its laws and who would use an amnesty act to again express their contempt of Congress.

I do not know how true these reports are, but I recognize that these hearings are designed in an attempt to establish that. Certainly, the soundest information is that draft evaders are not one class of people; that their acts were of a different degree arising from different motives; that some are more culpable than others; and that the soundest conclusion is that we should avoid dispensing the same justice to all of them.

There is the additional confused situation surrounding proposals to offer Government service to the evaders as a means of penance. We have jobless Vietnam veterans, unfortunately in large numbers, who might welcome the opportunity to serve their country again in such created positions or, preferably, in better ones. What guarantees are there that forcing the draft evaders on various Government agencies to serve "penance" would not saddle them with useless employees? Some draft evaders have made no bones about being surly and defiant. Their job attitudes might demoralize the career servants with whom they might be working. This could be devastating in the VA system to hospital patients, employees and the many volunteers from the veterans organizations, the Red Cross and others who justly point with pride to their VA hospital service.

There was no amnesty granted after the Korean war. It is, therefore, clear that amnesty has not been lightly given by our modern American Presidents.

We cannot believe that the Congress will ever decide that those who violated the law have the superior moral position to the President, the Congress and to the men who served.

If Congress should decide that they do, we wonder who next will take up the pretext and use the precedent to claim a moral superiority over some fresh enactments of the Congress.

We wonder what future legal dilemmas will be in store for us if we create such an extraordinary precedent as the Congress assenting to the right of citizens to determine unilaterally which laws they will obey.

Any determination of amnesty based on the moral superiority of draft law violators is contrary to our concept of justice. Historically, the Congress, the President and the Judiciary have struggled to determine the extent of power of each. Should we now add a new dimension to this three-sided struggle: namely, any citizen who claims that his unilateral view of morality is superor to the Congress, the courts and the President alike? If we establish this as a correct view, the day will arrive when there will be little further use for the Presidents, the courts or the Congress.

This Nation is faced with critical issues which need to be resolved without further delay. General amnesty for draft evaders and deserters is not such an issue at this time when over 1,200 Americans are still missing in action and unaccounted for in Southeast Asia.

There are some who say that general amnesty for those who "cut and run" and refuse to serve their country will help to heal the divisiveness among our people. The American Legion disagrees. We believe that, on the contrary, such action would further divide our people, create more bitterness and contribute to a further erosion of confidence in our Government and in our elected officials.

We are left with the fact that we have an existing system that guarantees every man his day in court. It has its imperfections, but I do not know a better one than ours.

With your permission, Mr. Chairman, and your colleagues, I also suggest that a copy of the President's Amnesty Board report be made a part of the record of this hearing.

Mr. DRINAN. Without objection, it is so ordered.

[The report referred to follows:]

REPORT OF THE PRESIDENT'S AMNESTY BOARD

The President's Amnesty Board, established by Executive Order of December 23, 1946, to review convictions under the Selective Training and Service Act of 1920, as amended, and to make recommendations for Executive Clemency, has completed its task and submits this, its first and final report.

Before adopting any general policies, the Board heard representatives of interested parties and groups. It heard representatives of historic peace churches, of the Federal Council of Churches of Christ in America, leaders of the Watchtower Bible and Tract Society (whose followers are known as Jehovah's Witnesses), officials of the U.S. Army and Navy, and the National Headquarters of Selective Service, representatives of citizen's groups, veterans' organizations and pacifist organizations, some of the violators themselves, formerly inmates of penal institutions, appeared in person or by representatives and were heard.

In perhaps one half of the cases considered, the files reflected a prior record of one or more serious criminal offenses. The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases. Nor could the Board have justified its existence, had a policy been adopted of refusing pardon to all.

In establishing policies, therefore, we were called upon to reconcile divergencies, and to adopt a course which would, on the one hand, be humane and in accordance with the tradition of the United States, and yet, on the other hand, would uphold the spirit of the law.

Examination of the large number of cases at the outset convinced us that to do justice to each individual as well as to the nation, it would be necessary to review each case upon its merit with the view of recommending individual pardons, and that no group would be granted amnesty as such.

Adequate review of the 15,805 cases brought to our attention would have been impossible had it not been for the cooperation of government departments and agencies, such as the Office of the Attorney General, the Federal Bureau of Investigation, the Bureau of Prisons, the Criminal Division of the Department of Justice, the U.S. Probation Officers, the Administrative Office of the U.S. Courts, U.S. Attorneys throughout the country, the Armed Forces of the U.S., and the Headquarters of Selective Service. The records of these officers were made available, and those in charge furnished requested information.

The information derived from all sources was briefed by a corps of trained reviewers. It included such essential data as family history, school and work records, prior criminal record, if any, religious affiliations and practices, Selective Service history, nature and circumstances of offenses, punishment imposed, time actually served in confinement, custodial records, probation reports, and conduct in society after release. In addition, the Board heard in most instances psychiatric reports for one or more voluntary statements by the offender concerning the circumstances of the offense.

When the Board organized in January 1946, about 1,200 of 15,805 violators of Selective Service were in penal institutions, the number diminished daily. At the present time there are 626 in custody; 550 of these have been committed since the constitution of this Board. The work of the Board was directed chiefly to examining the propriety of recommending restoration of civil rights to those who have been returned to their homes.

In analyzing the cases we found that they fell into classes, but that in each class there were exceptional cases which took the offender out of the class and entitled him to special consideration. The main divisions into which the cases fell were: (1) those in violation due to a wilful intent to evade service; and (2) those resulting from beliefs derived from religious training or other convictions.

At least two thirds of the cases considered were those of wilful violations, not based on religious scruples. These varied greatly in the light of all the relevant facts disclosed in each case. It became necessary to consider not only the circumstances leading up to the offense, but the subject's background, education and environment. In some instances what appeared a willful violation was in fact due to ignorance, illiteracy, honest misunderstanding or carelessness not rising to the level of criminal negligence. In other cases the record showed a desire to remedy the fault by enlistment in the Armed Forces.

Many of the wilful violators were men with criminal records; many whose record included murder, rape, burglary, larceny, robbery, larceny of Government property, fraudulent enlistment, conspiracy to rob, arson, violations of the narcotics law, violations of the immigration laws, counterfeiting, desertion from the U.S. Armed Forces, embezzlement, breaking and entering, bigamy, drinking benzedrine to deceive medical examiners, felonious assault, violations of National Motor Vehicle Theft Act, extortion, blackmail, impersonation, insurance frauds, bribery, black market operations and other offenses of equally serious nature; men who were seeking to escape detection for crimes committed; fugitives from justice; wife deserters; and others who had ulterior motives for escaping the draft. Those who for these or similar reasons exhibited a deliberate evasion of the law, indicating no respect for the law or the civil rights to which they might have been restored, are not, in our judgment, deserving of a restoration of their civil rights, and we have not recommended them for pardon.

Among the violators, quite a number are now mental cases. We have made no attempt to deal with them, since most of them remain in mental institutions with little or no chance of recovery. Until they recover mental health, their loss of civil rights imposes no undue burden.

The Board has made no recommendation respecting another class of violators. These are the men who qualify for automatic pardon pursuant to Presidential Proclamation No. 2676, dated December 24, 1946. They are the violators who, after conviction, volunteered for service in the Armed Forces prior to December 24, 1945, have received honorable discharges following one year or more of duty. Most of those who, prior to the last-mentioned date and subsequent to that date, entered the Army and received honorable discharges with less than a year of service have been recommended for pardon. These men have brought themselves within the equity of Presidential Proclamation No. 2676.

The second class of violators consists of those who refused to comply with the law because of their religious training, or their religious, political or sociological beliefs. We have classified them, generally, as conscientious objectors. It is of interest that less than six per cent of those convicted of violating the act asserted conscientious conviction as the basis of their action. This percentage excludes Jehovah's Witnesses, whose cases were dealt with hereafter. Although the percentage was small, these cases presented difficult problems.

The Selective Service Boards faced a very difficult task in administering the provisions concerning religious conscientious objection. Generally speaking, they construed the exemption liberally. Naturally, however, Boards in different localities differed somewhat in their application of the exemption. In recommending pardons, we have been conscious of hardships resulting from the factor of error.

Many of the Selective Service Boards did not consider membership in an historic peace church as a condition to exemption to those asserting religious conscientious objection to military service. Nor have our recommendations who were members of no sect or religious group, if the subject's record and all the circumstances indicated that he was motivated by a sincere religious belief. We have found some violators who acted upon an essentially religious belief, but

were unable properly to present their claims for exemption. We have recommended them for pardon.

We found that some who sought exemption as conscientious objectors were not such within the purview of the Act. These are men who asserted no religious training or belief but founded their objections on intellectual, political or sociological convictions resulting from the individual's reasoning and personal economic or political philosophy. We have not felt justified in recommending those who thus have set themselves up as wise and more competent than society to determine their duty to come to the defense of the nation.

Some of those who asserted conscientious objections were found to have been moved in fact by fear, the desire to evade military service, or the wish to remain as long as possible in highly paid employment.

Under the law, the man who received a IV–E classification as a conscientious objector, instead of being inducted into the Armed Forces, was assigned to a Civilian Public Service Camp. The National Headquarters of Selective Service estimates that about 12,000 men received this classification, entered camps and performed the duties assigned them. Certain conscientious objectors refused to go to such camps, refused to comply with regulations and violated the rules of the camps in various ways as a protest against what they thought unconstitutional or unfair administration of the camps. Some deserted the camps for similar reasons. We may concede their good faith. But they refused to submit to the provisions of the Selective Service Act, and were convicted for their intentional violation of the law. There was a method to test the legality of their detention in the courts. A few of them resorted to that method. Where other circumstances warranted we have recommended them for pardon. But most of them simply asserted their superiority to the law and determined to follow their own wish and defy the law. We think that this attitude should not be condoned, and we have refrained from recommending such persons for favorable consideration, unless there were extenuating circumstances.

Closely analogous to conscientious objectors, and yet not within the fair interpretation of the phrase, were a smaller, though not inconsequential number of American citizens of Japanese ancestry who were removed in the early stages of the war, under military authority, from their homes in definite coastal areas and placed in war relocation centers. Although we recognize the urgent necessities of military defense, we fully appreciate the nature of their feelings and their reactions to orders from local Selective Service Boards. Prior to their removal from their homes, they had been law-abiding and loyal citizens. They deeply resented classification as undesirables. Most of them remained loyal to the U.S. and indicated a desire to remain in this country and to fight in its defense, provided their rights of citizenship were recognized. For these we have recommended pardon, in the belief that they will justify our confidence in their loyalty.

Some 4,300 cases were those of Jehovah's Witnesses, whose difficulties arose over their insistence that each of them should be accorded a ministerial status and consequent complete exemption from military service, or Civilian Public Service Camp duty. The organization of the sect is dissimilar to that of the ordinary denomination. It is difficult to find a standard by which to classify a member of the sect as a minister in the usual meaning of that term. It is interesting to note that no representations were made to Congress when the Selective Service Act was under consideration with respect to the ministerial status of the members of this group. Some time after the Selective Service Act became law, and after many had been accorded the conscientious objector status, the leaders of the sect asserted that all of its members were ministers. Many Selective Service Boards classified Jehovah's Witnesses as conscientious objectors, and consequently assigned them to Civilian Public Service Camps. A few at first accepted this classification, but after the policy of claiming ministerial status had been adopted, they changed their claims and they and other members of the sect insisted upon complete exemption as ministers. The Headquarters of the Selective Service, after some consideration, ruled that those who devoted practically their entire time to "witnessing," should be classified as ministers. The Watchtower Society made lists available to Selective Service. It is claimed that these lists were incomplete. The Selective Service Boards' problem was a difficult one. We have found that the action of the Boards was not wholly consistent in attributing ministerial status to Jehovah's Witnesses, and we have endeavored to correct any discrepancy by recommending pardon to those we think should have been classified.

The sect has many classes of persons who appear to be awarded their official titles by its headquarters, such as company servants, company publishers, advertising servants, etc. In the cases of almost all these persons, the member is employed full time in a gainful occupation in the secular world. He "witnesses," as it is said, by distributing leaflets, playing phonographs, calling at homes, selling literature, conducting meetings, etc. in his spare time, and on Sundays and holidays. He may devote a number of hours per month to these activities, but he is in no sense a "minister" as the phrase is commonly understood. We have not recommended for pardon any of these secular workers who have witnessed in their spare or non-working time. Many of them perhaps would have been granted classifications other than I–A had they applied for them. They persistently refused to accept any classification except that of IV–D, representing ministerial, and therefore, complete exemption. Most of their offenses embraced refusal to register, refusal to submit to physical examination, and refusal to report for induction. They went to jail because of these refusals. Many, however, were awarded a IV–E classification as conscientious objectors, notwithstanding their protestation that they did not hand it. These, when ordered to report to Civilian Public Service Camp, refused to do so and suffered conviction and imprisonment rather than comply. While few of these offenders had theretofore been violators of the law, we cannot condone their selective service offenses, nor recommend them for pardons. To do so would be to sanction an assertion by a citizen that he is above the law; that he makes his own law; and that he refused to yield his opinion to that of organized society on the question of his country's need for service.

In summary we may state that there were 15,805 Selective Service violation cases inducted. In this total there were approximately 10,000 wilful violators, 4,300 Jevovah's witnesses, 1,000 religious conscientious objectors and 500 other types. Of this total 612 were granted Presidential pardons because of a year or more service with honorable discharges from the Armed Forces. An additional approximate 900 entered the Armed Forces and may become eligible for pardon upon the completion of their service. When the Board was created, there were 1,200 offenders in custody. Since that date an additional 550 have been institutionalized. At the present time, there are 626 in confinement, only 76 of whom were in custody in January 6, 1947.

Tabulation

Convictions under Selective Service Act considered	15,805
Wilful violators (nonconscientious objectors), approximately	10,000
Jehovah's Witnesses, approximately	4,300
Conscientious objectors, approximately	1,000
Other types of violators, approximately	500
Those who have received Presidential pardons under Presidential Proclamation 2676 dated Dec. 24, 1945, approximately	618
Those who entered the Armed Forces and may be receiving pardon, approximately	900
Subtotal	1,518
Recommended by this board	1,523
Total recommended for pardon and who may earn pardon through service in the Armed Forces	3,041

The Board recommends that Executive Clemency be extended to the 1,523 individuals whose names appear on the attached list, attested as to its correctness by the Executive Secretary of the Board, and that each person named receive a pardon for his violation of the Selective Training and Service Act of 1940 as amended.

OWEN J. ROBERTS,
Chairman.
WILLIS SMITH,
JAMES F. O'NEIL.

Mr. O'NEIL. Thank you.

Mr. DRINAN. Thank you very much, Mr. O'Neil, for your testimony.

I think it should be pointed out for the record—I just went through all the bills here—that there is no such thing as anyone recommending blanket or wholesale amnesty. In every single bill there is some provision for a review or for a board. So would you agree, Mr. O'Neil, that it is not really appropriate to talk about blanket or wholesale amnesty, since nobody in the Congress is urging that in any way?

Mr. O'NEIL. I was following the dictates of the resolution adopted at the convention, Mr. Chairman. And we have had reports, in the press, of course. But I agree with you that there is no bill now being considered that would give what we might call an unconditional amnesty.

Mr. DRINAN. In that connection, Mr. O'Neil, I and the subcommittee received a telegram from the American Legion when they learned in February of these forthcoming hearings. And the telegram is somewhat inconsistent—first it says that the American Legion is shocked and dismayed to learn that your subcommittee plans to hold hearings on amnesty for draft evaders and deserters, and then it goes on and says that this consideration is premature. If it is premature, that means it is going to happen someday. Is there an inconsistency that I see there?

Mr. O'NEIL. I would say that that was based on the fact that the American Legion, and the national commander, thought that there were more important issues that should be considered. I commend the hearings to set the machinery in order, so that some day a fair evaluation of this whole problem can be made and submitted to the Congress of the United States.

Mr. DRINAN. You would feel, therefore, that the Congress should act. Contrary to what the Department of Justice said this morning, you feel that the Congress does have the inherent power to enact legislation in this area?

Mr. O'NEIL. I am not familiar with that. I would say this, Mr. Chairman, that I feel that we have the existing machinery now to complete what should be done, in my opinion, the existing machinery in the courts, the military courts and in the civil courts. And that is the position of the American Legion.

Mr. DRINAN. In the civil courts, they have no statutory power to reverse a decision of a military tribunal that a person was not in fact entitled to a CO status.

Mr. O'NEIL. But they still have an appeal, and some of these can be presented directly to the President of the United States.

Mr. DRINAN. For commutation or for executive clemency.

Mr. O'NEIL. That is right.

Mr. DRINAN. But only the very wealthy and the people who have a bar association at their command can even think of getting clemency that way.

Mr. O'NEIL. Let me say this in connection with that, Mr. Chairman. The American Legion provides legal assistance to men who have received other than honorable discharges; it provides legal assistance, free legal assistance and claims assistance, to men who are honorably

discharged and who have claims against the Veterans' Administration. We have done this in many cases and have been very successful, I might add.

Mr. DRINAN. I am very aware of that, Mr. O'Neil. In fact, I send many constituents to the American Legion for that service. But to the best of my knowledge, the American Legion has not at any time taken the case of a person who claims that he was a conscientious objector and that he was denied that status. A person who, in other words, may well be under current prosecution. Has the American Legion at any time ever taken the case of a person who says he should be given amnesty?

Mr. O'NEIL. No, because these questions have been referred directly to the President and the machinery which exists for their getting relief.

Mr. DRINAN. You know the President's attitude. It was reenunciated this morning. He has said time and time again that he will not yield in this matter. So I really do not think, in all candor, that there is much relief there.

I am glad to have you here, because you are the one person who can tell us about the Amnesty Review Board of President Truman. On the bottom of page 8, you indicate that ultimately President Truman gave a complete pardon to 1,523 men, and a conditional one to 1,518, but that, however, more than 12,000 did not merit such treatment. Would you give me the norms how the Commission decided upon those who would be favored and those who would not?

Mr. O'NEIL. We are talking about President Truman's Amnesty Board now?

Mr. DRINAN. Yes.

Mr. O'NEIL. In the beginning, as I stated in my testimony, Mr. Chairman, the question of a general blanket amnesty was raised. And after discussion, it was resolved unanimously that we would proceed on an examination of each case and base our recommendations upon merit. Now, in order to do that, to get at this and do it properly, we appealed to the Attorney General of the United States to furnish us with a team of lawyers who could place these cases in categories to facilitate our examination.

Mr. DRINAN. What are the categories to whom amnesty was granted? Who got amnesty, and why?

Mr. O'NEIL. There were some with respect to whom errors were made by the Selective Service Board. They made errors in determining the status of some who had asked for religious conscientious objector status and it was not granted.

There were some who were illiterate and did not understand the law. There were some who fled the country without understanding the law.

And, of course, subsequently all of those were excused, at least we recommended amnesty for them. And the President accepted that. I would say that was the case in about 10 percent of the cases before us.

Now, in establishing the categories, Mr. Chairman, we were helped considerably by the fact that of the total number of cases, of the 15,805, 4,304 were members of the Jehovah's Witnesses sect. And the contention of their counsel was that they should be granted ministerial status rather than religious conscientious objector status.

In connection therewith, the Board recommended to the President of the United States that ministerial status which would automatically give them amnesty and which automatically would have granted them deferment in the original instance before their Selective Service Board, should be given to all of the members of the Jehovah's Witness sect who worked full time at Jehovah's witnessing.

Mr. DRINAN. Of the 1,523 that were recommended by your Board for what you call executive clemency, what we call amnesty, how many were Jehovah's Witnesses?

Mr. O'NEIL. That, I cannot tell you, I am sorry. But I could get that record for you.

Mr. DRINAN. About how many?

Mr. O'NEIL. Offhand, I would not dare to say.

Mr. DRINAN. Two-thirds of them?

Mr. O'NEIL. I would say it was not a substantial number. I would say it would fall within the area of 10 percent of the general total.

Mr. DRINAN. In the light of the years that have transpired, do you feel that the Truman Amnesty Review Board did all that it should have done?

Mr. O'NEIL. It did all it could have done? I would say "Yes" to that question.

Mr. DRINAN. You mentioned that *x* number of cases were brought to the attention of the Board. I take it, therefore, it was not automatic, that a person had to hear about the Board and had to apply.

Mr. O'NEIL. I would say this, that everyone had an opportunity to appear before the Board. Now, in many instances counsel came in and represented individuals, and in some instances they represented great numbers. But everyone had an opportunity to appear and present his case to the Amnesty Board. And many did.

Mr. DRINAN. But there were 15,800 people who had their cases processed. Now, I take it that they had to originate the inquiry or the application themselves. And I would assume that there were thousands more who never heard of the Board or did not come before the Board, and who, if they are still living, still have an undesirable discharge status.

Mr. O'NEIL. They would have a court record, a conviction, not an undesirable discharge.

I think that all reasonable attempts to reach them were made through the Justice Department. How extensive that operation was I do not know, and I would agree with you that there were some who probably never heard of the Board.

Mr. DRINAN. Do you think that if we get to an amnesty review board that every person who is in trouble should have his case automatically filed?

Mr. O'NEIL. I would think that would be fair.

Mr. DRINAN. Going back to the telegram of the American Legion, in it you tell the subcommittee that to submit to such consideration of amnesty is premature. When will it no longer be premature?

Mr. O'NEIL. I would say that we would feel better about it if we had some definitive reports on the missing in action in Southeast Asia. That would clarify the position of the delegates to the national convention, I am sure.

Mr. DRINAN. You mention that in your testimony at page 13. But would you spell out the inherent connection between that tragedy and the situation of amnesty?

Mr. O'NEIL. We think it is all part of the Vietnam war. An, of course, now that it has ended we would like to——

Mr. DRINAN. There is a lot of the Vietnam war that is still unresolved. In fact, there is still a war over there.

Mr. O'NEIL. And that is why we feel that this is premature.

Mr. DRINAN. You mean, we have to postpone consideration of all questions of amnesty until——

Mr. O'NEIL. I would not say that, Mr. Chairman. Certainly you could create the machinery that could help to expedite it when the time is proper to proceed with the amnesty question.

Mr. DRINAN. I still do not understand what you mean by proper. Do you mean 1 year from now or 10 days from now? Suppose that the MIA's were somehow——

Mr. O'NEIL. I would say that within the next year that that would be a possibility.

Mr. DRINAN. I am glad to hear that. Thank you very much.

I am glad to see that our distinguished chairman is back.

I will yield to the distinguished gentleman from New York and Mr. Kastenmeier will resume the Chair.

Mr. SMITH. Mr. O'Neil, thank you for giving us the point of view of the American Legion in regard to amnesty.

I wanted to ask you some questions about the basis of amnesty and President Truman's Amnesty Board, but I think you have answered those questions to Father Drinan.

Father Drinan was seeking to find out if the American Legion supplied counsel or legal advice to draft evaders, and I think you said, "No," they did not. But I would say that it was a safe estimate that any draft evader who had been indicted and appears in court is always represented by counsel, either the American Civil Liberties Union, or Public Defenders, assigned counsel, or his own counsel.

Mr. O'NEIL. That is correct.

In connection with that, Mr. Congressman, apparently I did not make myself clear. But I did state that insofar as draft evaders were concerned, their cases would arise in our civil courts through the Department of Justice and the prosecution, and as you so well stated, they would be represented by counsel in such appearances before the civil courts.

Mr. SMITH. Mr. O'Neil, from your experience on President Truman's Amnesty Board, would it be your opinion that a question of amnesty could better be handled by such a board or under the present mechanism of our board system that would review under indictment charges against anyone who wished to throw himself into the justice system?

Mr. O'NEIL. Mr. Congressman, I think it would be an added protection of the rights of the individual involved to have such a board to which an appeal could be addressed over and above the decision of the court, because it is a multifaceted problem. And I think—I am prejudiced in this respect, of course—I think it was wise to have an amnesty board after World War II, I think that it was proper to have

such a board. And I think it rendered a great service. It was applauded by the press of the Nation and the general public, the decisions that were reached.

Mr. SMITH. You feel, then, that perhaps such an amnesty board, acting on the executive level, might do a better job than relying on the present court system?

Mr. O'NEIL. No, sir. This would only enter the picture after the decisions had been reached in the military courts and in the civil courts. And that is what transpired after World War II.

Mr. SMITH. Did your board look at only convicted draft evaders?

Mr. O'NEIL. That is right, sir, except in some instances where they turned themselves in—there were a very, very few who turned themselves in, who had fled the country and who turned themselves in, and their cases were referred to us directly by the court systems after hearing their cases.

Mr. SMITH. There have been proposals, and some of the bills before us, of course, call for an amnesty board to which each draft evader would apply, probably, and submit his case to that board on an individual basis, rather than submitting directly to the jurisdiction of the courts.

Mr. O'NEIL. I think the court system is preferable, because of our experience, Mr. Congressman, first through the courts, through the civil courts and the military courts, and then to a board, if one is established, either by the President, the Congress, or both.

Mr. SMITH. One other question, Mr. O'Neil. I think you stated in your statement that Mr. Justice Roberts, the chairman, in submitting the report of your board, said: "I never realized there were so many who were not entitled to amnesty." Now, were your board's recommendations narrowly based according to the law in effect at the time? For instance, we have heard a lot of testimony today about selective conscientious objectors, SCO, meaning in effect that someone whose conscience says, "I do not like this particular war, so I am not going to serve." Were your guidelines and your judgments based on looking at that kind of selective conscience or on the generally accepted guidelines of conscientious objection on the grounds of religious belief, family and religious training, and so forth?

Mr. O'NEIL. Mr. Congressman, I will answer that in two ways. Most of the cases that came to our attention in connection with the problem you raised in your questions were those involving religious conscientious objectors as such with the exception—and this spills over, as I explained, in the Jehovah's Witnesses, that they wanted ministerial status although many of them had been granted religious conscientious objector status. But I think the courts have already ruled in this country that a person cannot make a determination of what war he would support and what one he would not support. He could not do it on the grounds of selecting the war in which he would participate and opposing the one that he did not want to participate in. And that is the position of the American Legion, too.

Mr. SMITH. So that President Truman's Amnesty Board on which you served, in recommending Executive clemency, for instance, to some one who had claimed to be a conscientious objector, would do so if your board found he really was a conscientious objector according to the standards then existing, and that perhaps his draft board had made a mistake?

Mr. O'NEIL. That is correct, Mr. Congressman. And I think we adopted a most liberal attitude on that, and recommended that where there were mitigating circumstances we should extend it to these individuals. Some of them were not articulate enough before their Selective Service Board to make their cases properly.

To properly present their cases.

Mr. SMITH. Thank you, Mr. O'Neil. That was alluded to once before, that perhaps draft boards many times did not give proper counseling to a registrant.

Mr. O'NEIL. That is quite correct.

Mr. SMITH. And where he had a good case under the law it never came through the board.

Mr. O'NEIL. That is correct, sir. And we tried very conscientiously to correct those conditions.

Mr. SMITH. Thank you very much.

Mr. KASTENMEIER [now presiding]. In resuming the Chair I would like to express my appreciation to my colleague from Massachusetts, Mr. Drinan, for assuming the Chair. And I regret that I missed hearing the distinguished former Senator from Alaska, Mr. Gruening.

I have really no questions to ask of you, Mr. O'Neil. I am mindful of your long service to the Republic in many capacities. And we all appreciate that.

Mr. O'NEIL. Thank you, Mr. Chairman.

Mr. KASTENMEIER. I do note, however, in your statement that you draw the conclusion that the whole amnesty question is clouded and everyone is groping in such darkness that for Congress to rush into amnesty action would be inadvisable. I do not think it is indicated that the Congress is going to rush into this. The existence of these hearings does not in and of itself indicate that we will rush into enactment of any legislation. May I say, without meaning to offend anyone, that indeed we are less likely to rush into the enactment of anything than perhaps the Legion was at its convention in taking the matter up and drawing a resolution on the matter. I say that partly because of the telegram we received from certain of your officers.

But in any event, we are searching for facts, and we are searching for guidance, and we are searching for, frankly, the recommendations of all facets of the citizenry of our Republic that have something thoughtful and informative and persuasive to say about the subject, being mindful that in the history of our Republic we have from time to time dealt with this. Today, in terms of numbers of individuals affected, we have more than in recent generations. So that 1 year after the war has ended, as you mentioned to Mr. Drinan, there are still wounds open with respect to that war, and elements unresolved. Nonetheless, we think for the dialog to ensure is appropriate.

Mr. O'NEIL. I commend you for it, Mr. Chairman. And I commended the committee, as I did in my testimony.

Mr. KASTENMEIER. We are grateful to you, Mr. O'Neil, for appearing with your colleagues.

Our next witnesses are Robert K. Musil, associate secretary, The Central Committee for Conscientious Objectors, and Jeremy Mott, Midwest secretary of the Central Committee for Conscientious Objectors.

TESTIMONY OF ROBERT K. MUSIL, ASSOCIATE SECRETARY, THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS; ACCOMPANIED BY JEREMY MOTT, MIDWEST SECRETARY, CCCO

Mr. MUSIL. Mr. Chairman, my name is Robert K. Musil. I am the associate secretary of CCCO, an agency for military and draft counseling. I want to speak with some urgency in favor of a universal and unconditional amnesty.

I am always somewhat embarrassed when I speak in public on the question of amnesty, because we have heard a great deal about the question of people who are articulate and educated. Although I may be proven wrong, in the case of my own testimony the only reason I am able to speak to you today is because I would be against the case-by-case review of the cases presented here. I was a captain in the U.S. Army. I am not proud of that fact. I was aware of a number of crimes committed by the Armed Forces of the United States in violation of the statutes of the United States and the Geneva Convention and other conventions. I did speak for a time for the Department of Defense, so I will try and live up to that reputation.

I want to state at the outset my concern that my brothers who served in the Armed Forces with me and resisted that war are unable to testify along with me today. Many of the brothers who served in the Armed Forces with me will be unable to testify today because they have been killed. Others are in exile, in prison, and are uninvited to such prestigious gatherings because they do not represent prominent and respectable organizations. I cannot speak on behalf of each of those men, but I can speak in general on the entire question of the role of military deserters and other military offenses in the Indochina war.

I want to point out that that war still rages, in fact, largely due to congressional inaction and the failure of the United States to implement the cease-fire agreement of January 27, 1973.

It is almost 2 years to the day since similar amnesty hearings were held before the Senate Subcommittee on Administrative Practices and Procedures, and it has been many more years since the events of My Lai, the invasions and secret bombing of Cambodia and Laos, the killings at Kent State, and a whole series of events that many Americans seem to wish to forget. I do not, and others that I think I speak in concert with, do not wish to forget those events. They are central to the granting of amnesty.

Recently I testified as a defense expert on behalf of Pvt. Richard Bucklin on trial for the crime of being AWOL at Fort Carson, Colo. Dick left the Army in 1968 in Germany in protest over the war in Indochina and the crimes being committed there. Unfortunately, my testimony and other testimony was not accepted. Dick was sentenced in January to 15 months to hard labor at Fort Leavenworth. So he cannot be here to speak for himself today.

I wish that they could be, and I wish that the committee had subpenaed those people and brought them here to testify so that someone like myself, who can be here only because of the ability to address boards and panels and colonels and psychiatrists and chaplains can be here and they cannot. I will do the best I can. But I think they could speak far better than I could.

The image of Dick Bucklin sticks very much in my mind as these hearings go on. I want to speak with urgency. Dick is sitting right now in Fort Leavenworth as we sit comfortably, or uncomfortably, under the lights in this room. And at the same time, Lt. William Calley, sentenced for the murder of Vietnamese civilians, is free on bail. And if the newspapers are to be believed, he is beseiged with job offers. A Federal judge even had the temerity to liken Calley's situation to that of former Army Capt. Howard Levy, whose sole crime was refusing to make his medical skills available for the purposes of assassination, torture, and criminal war.

As a former U.S. Army captain myself, who refused to serve in Vietnam and was discharged as a conscientious objector, the image of Dick Bucklin at Fort Leavenworth, and Rusty Calley with his job offers, is forever burned in my mind. What does it say about us as a people, as a Nation? And what shall I answer to my friends who went to Canada, many of them having given up hope for a decent America years ago?

Much of what I will say depends very much upon the actions of this Congress and ultimately on the actions of the American people themselves. I still believe, perhaps naively, that when the full truth is known about the war, and about the people who resisted it, the American people and the Congress will grant a quick, universal, and unconditional amnesty. The truth, however, has been buried in an avalanche of coverups, public relations, and political pragmatism.

We were told by the President in one of his many lies, that there were "only a few hunderd men who fled the country," and we were entertained with the notion, in nationwide columns by Charles Colson, Patrick Buchanan, William Buckley, William White, and others, that deserters were few in number and a collection of "malingerers, opportunists, criminals, and cowards." The irony of these judgments from such men, repeated before the House Judiciary Committee, does not need to be underscored. The purpose of such a campaign—which even now is reflected in the Senate "Earned Immunity Act of 1974," where Senators Taft and Pell accept uncritically the Pentagon's assertion that less than 5 percent of Vietnam-era deserters were motivated by antiwar feelings—is clear, and I would like to examine those assertions in some detail.

During the Vietnam era, according to Pentagon statistics from the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, there were approximately 504,000 deserters from the U.S. Armed Forces during the Vietnam era. Currently, about 30,000 of those men are still at large. In my work, I see many of those men who decide after many years of torment living underground, being chased around by the FBI, that they need to turn themselves in. We have a great deal of experience with such men, and what I would like to do is turn around the question of desertion. I hear over and over again a kind of moral guilt put on the individual for their desertion. I think it would be better for the committee and for the people of the United States to ask what kind of military did we have, what kind of war did we run, that half a million men deserted? Who is responsible for that kind of desertion that in other armies would cause heads to roll? The conditions in the Armed Forces and the war, I think, underly each case of desertion. If you ask the Pentagon, however, and their

official guidance series, information guidance series—and I was an information officer for the Department of Defense—they claim that it is human nature that the grass somewhere else is greener. And I think that Colonel De Fiori and other spokesmen, Lieutenant General Benade and others say that those men left because they had romantic entanglements, personal problems, and so on. I think the facts speak differently.

Normally, we have discovered that in each case of desertion from the Armed Forces, there is a complexity of motivations. There is usually a precipitating incident—orders to Vietnam, the new exposure of some dreadful atrocity, racial or other abuse by a superior, or a personal or family crisis that the military fails to recognize as legitimate. But there is always the underlying feeling that they are serving in a useless war or a war that they oppose, one in which most Americans were not called to serve. In listening to representatives from the American Legion and other organizations, one would think that every American carried arms during the Vietnam era. I think other people will testify that that is not the case. It was an unfortunate minority, people who have been referred to as the victims who were forced to carry the burden of their war while other Americans went about their daily business.

I want to point out to the committee a discrepancy in Pentagon statistics concerning deserters that I discovered, and other people did too. And I tried to bring it to public attention. I attached to the back of my testimony a chart received from the Office of the Assistant Secretary of Defense on January 1, 1972. On that chart they provided raw data that breaks down by year and by service from 1958 to 1972 the numbers of men dropped from the rolls of their units, that is, administratively classed deserters. And next to that they have a column, number returned to military control, either apprehended or voluntarily. Having nothing else to do one night I added the column up with an adding machine. I wish Members of the Congress or the press or others here had done that. I worked for an organization that is busily scrambling for funds all the time, and I should not be wasting my time. However, when I read off the column and added it up I discovered that there was a discrepancy in which, according to that chart at that time in January 1972, there were 134,000 deserters. I personally queried by telephone Lt. Col. James Hinebaugh. And he indicated to me that that chart is labeled inaccurate, no longer to be used; those figures are not relevant. However, the figures of numbers dropped from the rolls have continued to be repeated by the Department of Defense, while it is only the numbers returned to military control by year that are no longer available. I would hope that the committee, in questioning the Department of Defense, would ask them about this chart. It seems to me that there are only two possible explanations, both of which are somewhat ominous. Either the Department of Defense was so incompetent for a period of about 12 years that they had no idea of the numbers of deserters and were missing about 100,000, or the numbers have been manipulated for political purposes. I do not know what the answer to that question is. I think that this subcommittee can find out the answer to that question.

Mr. KASTENMEIER. On that point, is it at all possible that in fact there are—whatever the difference is, 140,000—deserters not returned to military control, somewhere at large?

Mr. MUSIL. Yes; it is possible I would not want to state categorically that that is the number of people. Obviously, the number is unknown. These people are all over the country, they are in their hometowns, they are in large cities. I know of a case where the parents of a deserter have his Vietnam medals hung over the fireplace. The neighbors think he is a hero. He is a deserter from the U.S. Armed Forces. Those cases are located in every town and every village in this country. It is impossible to have an accurate reading.

One of the things the Pentagon tries to do, of course, is to have an air of infallibility. And in my experience in working through their information services that they are not infallible, and our information in dealing with such men is that often their records are misplaced—there is no record of them whatsoever. But I do not want to get bogged down. The numbers question is extremely distressing to me personally, whether there are 30,000 at large or 130,000 at large is really not the issue. There are large numbers of men who are still in jeopardy. They are being picked up right now, as we are speaking. It usually happens by a relative thinking it best that they be turned in, and they call up the Federal Bureau of Investigation. Or they get involved with some minor incident with the law and are discovered through a computer check. So the men who are attempting to start new lives—and I will not bore you with hundreds of cases, although I wish I could—there are men who would like to start their lives anew, but are hounded throughout the country as criminals.

I would like to talk somewhat about the question.

I think most of my comments on the question of deserters and their motivation are available in an article I did for the Nation in April 1973. I can give the full text of that to the subcommittee.

[The article referred to appears at p. 331.]

The other thing I was going to speak about was other than honorable discharges. However, other people will testify on that question. In fact, there are some veterans appearing who have other than honorable discharges.

However, I did want to speak briefly about the question of violence and nonviolence.

By and large, the opposition to this war was nonviolent, incredibly so, given the failure of the normal political process, traditional forms of political action, and lawful dissent to bring a quick end to a war that I believe to be unprecedented in its criminal and barbaric nature. And I think that anyone who looks closely at the facts of that war, who speaks to veterans, who look at the film, who listen to the testimony of people who talk about the atrocities they participated in, cannot deny that fact.

Many Members of Congress supported that war, and of those who did not, I do not know of a single one publicly committed to pacifism or a life of nonviolence. All of you would be rejected as conscientious objectors by your local draft board or by the military. And yet, when it comes to the question of amnesty, one would think that the Congress was peopled by the ghosts of Mahatma Gandhi. Yes; we can understand certain acts against the war, but not violence * * *.

Let me state my point bluntly. If you are committed to nonviolence, you will support amnesty. If you recognize violence as a sometimes necessary, if tragic, part of human life, you must weigh the minimal

violence of those who opposed the war to the war itself—against saturation bombing of churches, hospitals, schools, hamlets; the wanton destruction of forced urbanization, of free fire zones and harassment and interdiction fire; against napalm, phosphorous, antipersonnel mines, bombs and bomblets; and against the conventional violence of jets, artillery, automatic weapons, yes—My Lai. And you must keep in mind the violence at home—the Kent States, the police riots, the provocateurs, the Huston plan, the campaign against the new left.

You must weigh your response, too, as a nonpacifist, if you were drafted and ordered to Vietnam, a war you deeply despised. I would suggest that many of you would have been absent without official leave, or would hold bad discharges, or if you were thwarted and desperate enough might have struck out at your sergeant or commander, or attempted to stop the war through some act of sabotage.

I qualified only because I became convinced that I was opposed to all wars. I also submitted a 60-page document on conscientious objection, including historical quotes. I had one of the finest military lawyers in the country, and I was able to receive an honorable discharge. If men such as yourselves had been serving in the Vietnam war and were deeply opposed to it but not pacifists, there would have been no relief.

In fact, the military went to great lengths, it seems to me, to cover up the availability of such discharges. Our organization had to go to the trouble with our limited resources of printing up nearly a quarter million booklets to hand out free to GI's to tell them that there were discharges available. I think the subcommittee should call in the Department of Defense and ask them what provisions they took to make sure that people were aware of their rights and discharges.

And finally, even if you were aware, it was only those people who could present their case in some traditional, philosophical, religious, and other moral testimony to career chaplains and commanders. The ordinary GI's who hated that war, who were deeply familiar with the atrocities, who may have been beaten by their sergeants—and I think you are all aware of such incidents, although they are increasingly buried—there was no way out other than desertion. And I would agree with the remarks of Senator Gruening, who had a great deal of influence on my own life. And I was glad to hear him speak unequivocally about the motivations of deserters. I think they did the right thing.

[Mr. Musil's statement follows:]

STATEMENT ON AMNESTY OF ROBERT K. MUSIL, ASSOCIATE SECRETARY, CCCO/AN AGENCY FOR MILITARY AND DRAFT COUNSELING

My name is Robert K. Musil. I am Associate Secretary of CCCO/An Agency for Military and Draft Counseling. I want to speak with some urgency in favor of a universal and unconditional amnesty. It is more than a year since the signing of the Cease-Fire Agreements in Indochina, although thanks to Congressional inaction that war still rages. It is almost two years to the day since similar amnesty hearings were held before the Senate Subcommittee on Administrative Practices and Procedures, and many more years since the events of My Lai, the invasions and secret bombings of Cambodia and Laos, the killings at Kent State and a whole series of events that many Americans seem to wish to forget, but which are central to the granting of amnesty.

Just recently, I testified as a defense expert witness on the subject of deserters and amnesty at the pre-trial hearing of Pvt. Richard Bucklin at Fort Carson,

Colorado. Dick left the Army in 1968 in protest over the war and returned over five years later to demand amnesty. He was sentenced to 15 months hard labor at Ft. Leavenworth. He is there now, even as we talk. And when he completes his sentence, he will have suffered nearly seven years for an act of protest over a war that most Americans have long since recognized as wrong.

In the meantime, Lt. William Calley, sentenced for the murder of Vietnamese civilians, is free on bail, and if the newspapers are to be believed, is beseiged with job offers. A Federal judge even had the temerity to liken Calley's situation to that of former Army Captain Howard Levy, whose sole crime was refusing to make his medical skills available for the purposes of assassination, torture, and criminal war.

As a former U.S. Army Captain myself, who refused to serve in Vietnam and was discharged as a conscientious objector, the image of Dick Bucklin at Ft. Leavenworth, and Rusty Calley with his job offers, is forever burned in my mind. What does it say about us as a people, as a nation? And what shall I answer to my friends who went to Canada, many of them having given up hope for a decent American years ago?

Much of what I will say depends very much upon the actions of this Congress and ultimately on the actions of the American people themselves. I still believe, perhaps naively, that when the full truth is known about the war, and about the people who resisted it, the American people and the Congress will grant a quick, universal and unconditional amnesty. The truth, however, has been buried in an avalanche of cover-ups, public relations, and political pragmatism.

I will focus on the plight of deserters, those given other-than-honorable discharges, and those charged with or convicted of military crimes, because it is in these areas that there is the most myth, the least enlightenment, and the greatest need. Myths abound, for example, about deserters. Most people rely on World War II cliches and stereotypes of the bad guy slinking away from his buddies under fire, or they took at face value the Administration's coordinated media campaign of disparagement that followed the signing of the cease-fire agreements.

THE ADMINISTRATION CAMPAIGN TO DISCREDIT DESERTERS

We were told by the President that there were "only a few hundred men who fled the country," and we were entertained with the notion, in nationwide columns by Charles Colson, Patrick Buchanan, William Buckley, and William White, and others, that deserters were few in number and a collection of "malingerers, opportunists, criminals and cowards." The irony of these judgments from such men, repeated before the House Judiciary Committee, does not need to be underscored. The purpose of such a campaign—which even now is reflected in the Senate "Earned Immunity Act of 1974," where Senators Taft and Pell accept uncritically the Pentagon's assertion that less than 5% of Vietnam-era deserters were motivated by anti-war feelings—is clear. By portraying the number of deserters at large as insignificant, and impugning their motives as confused at best, but more likely as dishonorable and criminal, the Administration hoped in one blow to discredit its amnesty opposition, justify its war policies, and cover up long-standing abuses in the Armed Forces.

THE FACTS ABOUT DESERTERS

Let us take a fresh look at the facts concerning those few hundred malingerers, cowards and criminals. First, it must be emphasized that the term "deserter" is simply a convenience. It is used as an administrative classification by the military to refer to those persons who have been absent without leave for more than thirty days, and who have been dropped from the rolls of their unit. Far greater numbers of service members were absent without leave for periods up to a month throughout the Vietnam War.

The numbers of those administratively classified as deserters during the Vietnam era, however, is staggering and probably underreported. For Fiscal '65 through mid-Fiscal '73 (roughly from the Gulf of Tonkin incident through the signing of the Cease-Fire Agreements), the Pentagon reports over 500,000 cases of desertion, and over 30,000 deserters still at large. Even accepting these figures for the moment, which I do not, we can understand Administration attempts to minimize and vilify deserters. In addition to well-known protests among GIs, another significant segment of the Armed Forces (about 5% of the Army and Marines) protested the war the best way they knew how—by leaving. In 1971,

in the Army alone, 79,000 soldiers (7.3% of all Army personnel) deserted. This desertion rate was more than triple the highest rate during the Korean war, and higher than any rate recorded during World War II. If we add the short-term AWOL rate in the Army (17.7% in 1971), nearly one quarter of all GIs walked away from their units for periods ranging from a few days or weeks to years.

PENTAGON ASSERTIONS ON DESERTER MOTIVATION

What were they escaping from? Given the unpopularity of the war at home, reports of maltreatment and mismanagement of personnel, of racism and unfairness in military justice, one would suppose that these record rates of desertion were related to anti-war and anti-military feeling. Not so, says the Petnagon. The official Department of Defense Information Guidance Series claims:

> It is human nature that the grass somewhere else sometimes appears greener. Since the beginning of military forces, the urge to "go over the hill" has been more than some could resist. . . . Only a small percentage . . . of deserters who have fled to a foreign country in recent years have been motivated by political reasons or anti-Vietnam feeling.

To back up this contention, the Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs, has widely circulated studies that purport to show that less than 5% of all deserters were motivated by anti-war or political feeling. These figures, presented by then Maj. Gen. Leo S. Benade, Deputy Assistant Secretary of Defense, are based on reports from field commanders on Form DD–N(A) 1039, in which the commanders estimate a man's motivation for leaving. These report have been required only since December 24, 1970, and are entitled "U.S. Military Absentees Who Have Placed or Have Attempted to Place Themselves Under Control of a Foreign Nation to Protest Against the U.S. or Commit Disloyal Acts."

Given that, from our experience, most deserters remain within the United States by going "underground" in large cities, or even in their home towns, and that such information became desirable to the Pentagon only after political exiles received widepspread attention and is based on the estimates of field commanders, what credibility shall we give such analyses or motivation?

I suggest that the Subcommittee determine how and why such reports were instigated, and restate the question to the Department of Defense as, "What is your estimation, based on what information, of the percentage of Vietnam-era deserters whose motivation was solely selfish and personal, and entirely unrelated to opposition to the Vietnam War, political feelings, racial injustice, denial of proper discharges, and maltreatment and mismanagement on the part of the Armed Forces?"

I would hope that the Pentagon would reply with some humility, that in fact they do not know. Inded, it is this mechanical theory of human motivation that must be rejected in approaching the question of amnesty. Were their motives pure or impure? That is the usual way of stating the problem. Our experience at CCCO, over the Vietnam era, is that GIs have sought discharges, opposed the war, gone AWOL, out of a complex of motivations. In each case of the thousands with which we have had contact, there is usually a precipitating incident—orders to Vietnam, the new exposure of some atrocity, a new round of bombing or invasion, or some incident of denial or discharge, racial or other abuse by a superior, or a personal or family crisis that the military fails to recognize as legitimate—but always there is an underlying feeling of the illegitimacy or uselessness of the war in Indochina or of serving in the Armed Forces during such a period that supports the decision to act.

The motivations of deserters, in my opinion, have not been, and cannot be, fully explained by the Pentagon. The essential question remains—why were there so many and why do their numbers rise and fall in almost direct correlation to our direct involvement in the Indochina War? Shall we blame record desertion rates on personal, mental and moral failure, or on the machinations of that evil pediatrician, Dr. Spock?

DISCREPANCIES IN PENTAGON DESERTION STATISTICS

Department of Defense statistics on the numbers of deserters are presented with an aura of infallibility similar to that of the motivational analyses, but they are equally suspect. On January 1, 1972, OASD (M&RA) released untotaled figures showing the number of deserters from fiscal year 1959 through the first

few months of fiscal 1972. These were broken down into Armed Forces members dropped from units and returned to military control by service and by year. The raw figures for those dropped from fiscal 1965-early fiscal 1972, when added up, came to 421,104, while those returned came to only 286,625. These figures would indicate that as of January, 1972, there were 134,479 deserters at large.

When questioned about this discrepancy, Lt. Col. James Heinbaugh of OASD (M&RA) stated, "That chart is now marked, 'not to be used, inaccurate.' We no longer give the breakdown figures by year for numbers returned to military control. You have the last chart of that type." That chart, however, exactly matches current figures from DoD on numbers *dropped* from unit rolls, which are still given by year. Only the numbers *returned* are no longer given by year or service. They are available only in summary.

The conclusion is obvious and ominous. Either Pentagon record-keeping from 1958–1972 was inaccurate to the tune of 100,000 deserters, or the current figures of those returned to military control have been manipulated to hide a massive problem and serve political ends. Whatever the true figures, we can proceed on the conservative assumption that there are *at least* 30,000 deserters still at large, and that during the Vietnam era at least 500,000 members of the U.S. Armed Forces deserted.

WHO DESERTS? WHO IS RESPONSIBLE?

The question of why these men deserted and had to suffer as much as they have must be turned around. Who is responsible for creating the conditions leading to their desertion? Why were they not discharged before being driven to such an extreme solution to their problems?

A few quick examples illustrate the question of responsibility. Take Tom, a black Marine from Philadelphia who had to quit high school to help his mother, on welfare, raise nine other children. He joined the Marines to earn money. When his wife began to have complications with her pregnancy, Tom went to his drill instructor for help, but got none. It was then he left Camp Lejeune to support his mother and expectant wife. Finally a neighbor reported him. He was picked up by the FBI and turned over to the Marines to face general court-martial charges. There are in the military supposedly provisions for emergency leave, compassionate transfer, and even discharge because of hardship. Why was Tom denied one of these alternatives, and who is responsible? Shall he not receive an amnesty because the motivation behind his AWOL is "personal" or shows "inability to adjust"?

How about Scott, a young man from Peoria, Illinois, and typical of many Vietnam veterans who deserted after they got back to the States? He had enlisted in the Marines and was soon fighting along the DMZ, where his position was overrun the first week. Scott has a formidable collection of medals to show for his bravery, but as he fought he became sickened by killing, especially the senseless destruction and killing of civilians by U.S. troops. He turned to his chaplain for help, explaining that he could no longer kill and wanted out. But he was told simply to stick it out; no menton of conscientious objector discharges. Like many soldiers in Vietnam, he turned to drugs for escape and became dependent. Upon his return to the States, he again turned to a chaplain for help with his drug problem and his feelings against war, but was merely advised to pray. In desperation he went AWOL and sought drug counseling on his own. He shook his habit, and then turned to military counselors for help. Despite counseling and an excellent war record, he received an Undesirable Discharge.

What were Scott's motivations? Political opposition to the war and war crimes? Conscientious objection? Psychological, medical? Personal? In the long run, it does not matter. What does matter is that he was a victim of his government's war policies, and a victim of the military's policies of retaining personnel at practically any cost. What is important is where responsibility lies. The military will claim that abuses were isolated. Or if I and others were allowed to testify long enough, they would agree much of this is true, but after all we are only speaking of a minority of servicemen—less than 10% who did not receive honorable discharges during the Vietnam era.

These persons—the approximately 450,000 holders of other-than-honorable discharges, some 30,000 more deserters still at large, and those still in military stockades and prisons, have been disproportionately black or members of other minority groups and poor. Whether black or white, they were unable to obtain deferments or exemptions from the draft, unable to find draft counseling or other legal aid, and were from the start drafted, or enlisted under pressure of

the draft, in disproportionate numbers. It was only after entry into the Armed Forces that they met with systematic racism, mistreatment, and discovered the realities of military life and the war in Vietnam. Having turned against the war or the military, their options were few.

LEGAL DISCHARGES LITTLE KNOWN, UNJUSTLY GIVEN

The military made little effort to make the availability of discharges known. In fact, CCCO had to print and distribute free to GIs nearly a quarter of a million booklets describing discharge rights. Even if GIs were aware of discharge options, they were given reluctantly and sparsely throughout the Vietnam era.

Until Federal Court intervention in the process in 1969, for instance, most applications for conscientious objector discharge were routinely turned down. And even after the Supreme Court decision in *Welsh* v. *U.S.* which broadened recognition to non-religious objectors to war, most GIs could not qualify for such discharges. First, it must be recognized that CO status pertains only to those persons who are opposed to all war, not just the war in Vietnam. Thus, for most dissenting GIs, who are not pacifists, a CO discharge was an impossibility from the beginning. Even if an ordinary GI did turn against all war, he was unlikely to survive the rather middle-class-based procedures of applications, letters of support, interviews with career chaplains, psychiatrists and a usually unsympathetic commander.

The same holds true with other discharges for erroneous induction/enlistment, hardship, medical, or psychological problems. The military made no concerted effort to carry out the provisions of the law, and most GIs were simply unaware of their options, or unable to follow through on them successfully without adequate counseling or legal advice. Faced with these obstacles, most GIs, forced to choose between harsh sentences in the stockade or continuing duty in violation of their consciences and real needs, simply went AWOL.

It was the military's responsibility to meet the needs of these men. Dr. Curtis Tarr testified before Senator Kennedy's hearings on the draft and amnesty in 1972 that large numbers of men had been illegally drafted. The Gates Commission, among others, reported that before recent pay raises many GIs were destitute and forced to live on welfare. Dr. Peter Bourne has written that the psychological stresses of basic training are even more severe than those experienced in combat. And, of course, reports of racial abuse, stockade beatings, spinal meningitis, lack of medical care were rampant throughout the Vietnam era. Peter Barnes observes in *Pawns: The Plight of the Citizen Soldier* that "every week at Fort Dix, New Jersey, the Army's major Northeastern training base, there are an average of four suicide attempts. . . . Nine actual suicides occurred at Ft. Dix in 1968."

ANTI-AMNESTY DISTORTIONS HIDE WAR, MILITARY FAULTS

No wonder the Nixon Administration has tried to discredit deserters. To acknowledge their true numbers and their real motivations would require an admission that massive numbers of ordinary GIs rejected the war, and that countless thousands were denied humane treatment and legal discharges by a military that could keep its troops in the field only by fear and force. If the truth were known about deserters, the Administration might be forced to consider sweeping changes in military justice, training, and personnel policies, including the current discharge system.

Such changes are bound to come, but in the meantime what of the victims? The Department of Defense Report of the Task Force on the Administration of Military Justice in the Armed Forces states that "systemic racial discrimination exists throughout the armed services and in the military justice system. No command or installation—and, more important, no element of the military system—is entirely free from the effects of systemic discrimination against minority servicemen as individuals and as groups."

I would add that the military justice system, as well as the counseling by commanders, chaplains, psychiatrists, personnel officers and others charged with the welfare of servicemen is stacked against those who are poorest, least educated, or most likely to object to war and military service. The result is triple discrimination, mainly by class or race, against those who are forced by the draft or other circumstances to serve in the Armed Forces, are then abused and denied rights inside, and finally are branded for life at the other end with an other-than-honorable discharge.

THE EFFECTS OF BAD DISCHARGES

The effects of such discharges are becoming well known. Of the four other-than-honorable discharges—General, Undesirable, Bad Conduct, and Dishonorable—the last three, for all intents and purposes, bar the recipient from veterans' benefits. All four, according to a survey by Major Bradley Jones in the *Military Law Review*, carry severe stigmas for employment.

To use the most common example, the Undesirable Discharge, one-third of all business employers surveyed *automatically reject any applicant with a UD*. Three-fourths of them are influenced against the candidate by it. The situation is similarly bad with the other discharges (slightly better for General, even worse for Bad Conduct and Dishonorable). Jones also found that with all bad discharges, most employers look beyond the discharge to determine the cause.

SPN CODES HELP EMPLOYERS DISCRIMINATE

Employers are aided in all this by a system of codes called the Separation Program Numbers (SPN) found on all official discharge papers (DD Form 214). The SPN Code identifies the reason for discharge (in the interest of national security, alcoholism, apathy, unsanitary habits, drugs, conscientious objection, or being a "marginal producer" among scores of others). SPN codes can taint even an *Honorable Discharge*. In fact, there are well over 100,000 Vietnam vets with "good" discharges, i.e., Honorable, who can be discriminated against because SPN codes are readily available to employers. What most employers and most civilians don't know is how these discharges are given.

DISCHARGE METHODS SHOCKING

General and Undesirable Discharges are awarded administratively, *without trial*, while Bad Conduct and Dishonorable Discharges are adjudged punitively as a result of court-martial. In either case the methods used are shocking.

Administrative discharges can be given in lieu of court-martial, or for generally unsatisfactory performance. They are awarded by a board of officers without the procedural rights and protections of a trial, or, as is often the case, they are awarded when the service member has waived his rights to even such an unsatisfactory hearing. The reasons for such discharges include bed-wetting, apathy, obesity, character disorders, financial irresponsibility, homosexual tendencies, and a host of other vague reasons—including, in most branches, "for other good and sufficient reasons."

In the climate of dissent over Vietnam, it is not surprising that the discharge system has been grossly abused. Commanders have had little difficulty in branding protestors for life with administrative discharges. Often a commander will threaten a GI with the severe penalties of a court-martial, but, knowing he cannot get a conviction, will generously offer a bad discharge instead. Most returning AWOLs see the receipt of a UD in lieu of court-martial as the best of several bad alternatives, and, desperate to separate themselves from the war and the military, grasp at it rather than attempt a defense.

The situation is not much better with courts-martial. The vast majority of convictions during the Vietnam era were for the crime of AWOL. Another 10 percent or so were for disobedience of various kinds. Very few were for ordinary "criminal" behavior.

These procedures not only help the military to get rid of dissenters, they help hide the extent of anti-war activity. A bad discharge for "apathy" or "character disorders" or a conviction for "refusing orders" or "disrespect to a superior officer" looks a lot better in the statistics than "discharged as anti-war protester."

REVIEW PROCEDURES INADEQUATE

Given the war in Vietnam, the abuses of military justice, and the military discharge system, some relief for the victims of these injustices must be found. The current method of discharge review through a Board in Washington, D.C. is simply unsatisfactory. Since the inception of the Army Discharge Review Board in 1944, for example, only 14,860 of 94,700 cases, or 15.7%, have been upgraded to General or Honorable Discharges. And, to quote the DOD Report on Military Justice again:

> The data collected from the Discharge Review Boards and the Boards for the Correction of Military/Naval Records during the first quarter of calendar

year 1972 reflect a noticeable difference in the incidence of relief granted to white over black applicants.

The process of review is lengthy, is unlikely to lead realistically to discharge upgrading for all but the best prepared cases, and once again reflects a bias in favor of those best able to avail themselves of counseling, legal aid, and most likely to have any faith whatsoever in such procedures.

Given the unprecedented division in this country over the Indochina War, the lack of adequate provisions for discharge of those opposed to the war and the military—all at a time when most Americans were not called to serve—and given systematic injustices in military training, justice, and discharges, it would appear that the only just and equitable solution to the legal and social difficulties of these men and women is a universal and unconditional amnesty. This is the position of CCCO, as well as the more than 50 groups that make up the National Council for Universal and Unconditional Amnesty on whose Steering Committee I serve.

UNIVERSAL, UNCONDITIONAL AMNESTY IS SOLUTION

By universal, I mean all categories of citizens who have come into legal difficulties because of actions stemming directly or indirectly from their opposition to the Indochina War. For the military, this means amnesty for all AWOLs and deserters currently at large, the release from stockades and prisons of those convicted of military crimes during the Vietnam era, and the automatic upgrading of all other-than-honorable discharges from the Vietnam period.

By unconditional is meant simply that. Certainly any form of case-by-case review will be literally impossible given the immense numbers involved. Nor could such a system, however reasonably proposed, finally provide justice. As in the case of the 1947 Truman Amnesty Board, those who would benefit would be those best represented, best able to articulate their reasons for breaking the law, and whose reasons made the most sense to whoever would sit on such a panel.

In short, case-by-case review, which proved inadequate for the draft, and inadequate for military discharges, is bound to repeat the class and race bias of the draft, the military, and the 1947 Amnesty Board.

WHAT ABOUT VIOLENCE?

I would like to add some comments on non-violent and violent resistance to the war in Indochina. By and large the opposition to this war was carried out non-violently. Incredibly so, given the failure of traditional forms of political action and lawful dissent to bring a quick end to a war whose criminality and barbarity seems to me beyond question to all who dare to look at the facts.

Many members of Congress supported that war, and of those who did not, I do not know of a single one publicly committed to pacifism or a life of non-violence. All of you would be rejected as conscientious objectors by your local draft board or by the military. And yet, when it comes to the question of amnesty, one would think that the Congress was peopled by the ghosts of Mahatma Gandhi. Yes, we can understand certain acts against the war, but not *violence*. . . .

Let me state my point bluntly. If you are committed to non-violence, you will support amnesty. If you recognize violence as a sometimes necessary, if tragic, part of human life, you must weigh the minimal violence of those who opposed the war to the war itself—against saturation bombing of churches, hospitals, schools, hamlets; the wanton destruction of forced urbanization, of free fire zones and harassment and interdiction fire; against napalm, phosphorous, anti-personnel mines ,bombs and bomblets; and against the conventional violence of jets, artillery, automatic weapons, yes—My Lai. And you must keep in mind the violence at home—the Kent States, the police riots, the provocateurs, the Huston Plan, the campaign against the New Left.

You must weigh your response, too, as a non-pacifist, if you were drafted and ordered to Vietnam, a war you deeply despised. I would suggest that many of you would have been AWOL, or would hold bad discharges, or if you were thwarted and desperate enough might have struck out at your sergeant or commander or attempted to stop the war through some act of sabotage.

I say these things, not to shock, but to try to gain some sort of perspective. Previous amnesties in the United States and elsewhere have obliterated offenses up to and including armed rebellion and treason. Shall we give an amnesty to a man whose application for conscientious objector discharge was turned down and who then refused orders, or went AWOL, but not, say, to a black man who

could no longer stand the racial abuse of a drill sergeant, assaulted him, and then went AWOL?

The Vietnam War has put many Americans in impossible situations and created violence beyond imagination in Indochina. The list of those responsible for that violence and who are still at large is long and prominent. I need not bore you here with a recitation of the names of those responsible for the destruction of Vietnam. These men, I am afraid, have their amnesty. The Americans who opposed them, even sometimes with violence, need their amnesty, too.

CURRENT BILLS UNSATISFACTORY

Of the bills before this Subcommittee, none is satisfactory. H.R. 236 and H.R. 3100, however, submitted by Representatives Abzug and Dellums, come closest to providing justice to those who opposed the war. They have wisely included AWOL, desertion, missing movement, and various forms of counseling and aiding desertion or disloyalty in the list of offenses to receive automatic general amnesty. There are several glaring omissions, however. The most obvious being refusal of orders, disrespect, conduct unbecoming an officer, and all other acts prejudicial to good order and discipline. And there are other violations which must be included if those who opposed the war are to receive an amnesty. Additionally, this bill only provides for the automatic upgrading of discharges which stem from the listed offenses. Given the nature of administrative discharges, and the wide range of actions that GIs opposed to the war took to get themselves removed from the Armed Forces, this provision will not do. How can the holder of a discharge for drug abuse, or apathy, ever convince a commission as described in this bill that his actions were dictated by opposition to the war and that his discharge is a consequence of that opposition?

It is practically impossible. The same is true for all other violations to be reviewed by the Commission described in the bill. The burden of proof is on the individual who must show that his actions flow from a deeply held ethical or moral belief. Having worked with CCCO, I have some familiarity with the Pandora's Box of deeply held ethical or moral beliefs. The man who, with the help of lawyers and counselors, can calmly and articulately describe why his acts flowed, say, from the English concept of natural rights, or from Fletcher's relativistic ethics, will get his amnesty. The man who threw a wrench into his ship's engine, or who turned to drugs to escape the horror of the war, will not.

There is no end to this kind of weighing and sorting, and it is bound to discriminate against the least fortunate amongst a group that has already suffered disproportionately. No one fully understands the complexity of human motivation, but we do know that young Americans are still suffering because of a war that they did not make or choose, and which they could only escape—if they were not affluent or educated or influential or articulate enough—through often desperate means.

AMNESTY NEED URGENT, JUSTICE OVERDUE

It is time, indeed, it is past time, to undo these injustices. It is within the power of the Congress of the United States to declare a true universal and unconditional amnesty for all those who suffer because of their opposition to the Indochina War. I urge you to declare such an amnesty and to act swiftly. The hour is late. Most Americans, except the victims, both living and dead, of this war, have returned to more prosaic concerns. Their lives go on, for better or worse, unfettered by events in Indochina. But for those not-so-young Americans who resisted the war, each month that passes weighs heavily. As I conclude, the image of Richard Bucklin, imprisoned at Ft. Leavenworth, and nearly a million like him, reenters my mind. The need for amnesty is real and it is urgent; it is not simply a matter of dispassionate debate. Dick Bucklin and all the others must be freed if this nation is to struggle back toward justice and humanity. Otherwise, what can any decent and humane person say about America who looks and sees who it is who is behind bars, and who it is who walks the streets?

DEPARTMENT OF DEFENSE—INCIDENTS OF DESERTION, FISCAL YEARS 1959 THROUGH 1972

Fiscal year	Army (July 1-Sept. 30, 1971)		Navy (July 1-Nov. 30, 1971)		Marines (July 1-Dec. 31, 1971)		Air Force (July 1-Dec. 31, 1971)	
	Number dropped from unit role	Number returned to military control	Number dropped from unit role	Number returned to military control	Number dropped from unit role	Number returned to military control	Number dropped from unit role	Number returned to military control
1959	5,987	4,808	4,087	4,019	2,206	2,054	1,303	1,292
1960	6,777	5,966	2,667	2,606	2,176	2,209	730	719
1961	7,982	6,328	3,536	3,353	2,659	2,638	503	496
1962	10,407	8,293	3,318	3,199	3,022	2,849	693	690
1963	12,231	9,923	3,811	3,664	3,211	3,195	551	547
1964	11,517	10,178	3,623	3,470	3,078	3,023	461	458
1965	13,177	10,383	3,928	3,759	3,233	3,106	328	328
1966	14,244	12,401	5,745	5,121	3,263	2,908	295	292
1967	26,782	20,620	6,416	6,271	6,841	6,112	375	359
1968	39,234	24,109	5,621	5,508	8,419	7,448	393	374
1969	56,608	22,375	4,897	4,661	11,587	9,875	538	357
1970	65,643	32,536	6,352	5,773	16,109	13,499	984	772
1971	79,027	48,481	6,063	6,328	11,852	11,853	1,117	1,070
1972	12,860	10,462	2,115	2,412	5,985	6,041	1,073	1,031

Note: Deserters "at large":

Army (as of Jan. 18, 1972)	22,300
Navy (as of Nov. 30, 1971)	1,615
USMC (as of Dec. 31, 1971)	5,401
USAF (as of Dec. 31, 1971)	576
Total	29,892

Mr. MUSIL. I want to save some time for Mr. Mott. Jeremy Mott is the midwestern secretary of the Central Committee for Conscientious Objectors, and himself has been convicted of draft resistance.

Mr. MOTT. Yes; I would like to make a few remarks about the problems of the civilian draft refusers, those who were convicted in the civilian courts. I do not want to go through things that people have gone through before. But I want to point out some things in my own statement that I think are not generally known and which I think might be of interest to the members of the committee and to others.

First of all, we have learned in counseling that there are a good number of people who are in hiding or in exile needlessly. There are probably several thousand at least, draft refusers, who had good legal defenses and the Government decided not to prosecute them, but these men have never been told that. And they are still in exile or in hiding, and it just strikes me as a minimal step that the Government should be required to tell by registered mail all the men and their families who they have declined to prosecute over these last 12 years or so.

Another situation that I think is generally not so known is some of the disabilities that a conviction for draft refusal causes. The disabilities of being in prison are obvious. The disabilities of being on probation are obvious too, although less severe. But there are many disabilities that a convicted draft refuser has in his own life, because he has a felony conviction, and depending on State law he will lose many of his civil rights. He usually cannot vote, he cannot hold public office, and in many States he cannot be licensed for most of the jobs

which the States licenses, and he cannot hold a driver's license in some States, including Massachusetts. He cannot be an executor or guardian under a will in some States. He cannot adopt a child in some States. And apparently he cannot own real estate in some States. It is true that some of these things are not enforced. But many of them are.

So we are sentencing convicted draft refusers to a lifetime of third-class citizenship as convicted felons. And that is new, that is something that has happened in this century, but not in prior centuries in our history. In the 18th century and the 19th century, both in the Colonies before the Revolution and in this country during the Revolution, and after the Revolution right through the Civil War, conscientious objectors were practically always convicted by petty courts, usually by courts-martial, and whatever the penalties, although sometimes severe, they did not last a long time, and they did not have the permanent lifetime disabilities that a felony conviction has. And by now, from 1940 to the present time, we would have by my estimate, 24,000 men who have been convicted and who have not been pardoned or have not won on appeal, and have a lifetime in front of them as felons with very many of the rights of citizenship taken away from them.

Another thing that I would like to point out is some of the special problems affecting men in exile that are not as well known as they might be. This also is in the statement. Several of the amnesty bills that are now being considered would restore U.S. citizenship to those exiles who have given it up, if they want it back. Now, this is right and proper. Those who have become foreign citizens should be able to get their U.S. citizenship back if they wish to. But there are many who have become Canadian citizens or citizens of other countries who would not wish to get their U.S. citizenship back because they have formed permanent families and they have found permanent homes in these other countries. Under our present Immigration Act any alien who left the United States to avoid military service cannot legally enter the United States, not for any purpose. The U.S. Government is allowed to give that admissibility, but only for short-term and temporary visits and visas. Any full amnesty must include a repeal of this section, section 212(a)(22) of the Immigration Act, so that those men who have become foreign citizens can at least visit the United States on the same basis as other aliens.

We have found that most men who became Canadians do not even know that they are causing themselves these kinds of problems under American law when they became Canadian citizens or whatever they became. They are not even aware that they are making it illegal for themselves ever to set foot in the country again. And, of course, that does not stop the draft prosecution.

The last couple of things I would like to point out are on these questions of conditional amnesty and case-by-case amnesty. The conditional amnesty just does not work. Most men have gone through too much punishment, they have either done alternate service already as a condition of probation, or they have been in prison, or they have been in exile, and they are not going to do alternate service for many years. They have had enough punishment without going through any more. And I would note that conscientious objectors in Britain were not required to perform alternate service. If a man in Britain could show

that he was conscientiously opposed to performing alternate service he did not have to do so, he was exempted altogether. It would not be a first to allow conscientious objectors to go without doing alternate service.

On the question of the case-by-case amnesty, there the situation is even clearer. Basically, that has been tried and failed. That is basically what the draft boards and courts are doing when they consider conscientious objector cases. Is this man really a conscientious objector or is he not? Most are recognized. A great many are not. There is some incredible legal labyrinth affecting conscientious objectors when their cases get to court, and there is a whole series of traps which affect conscientious objectors in the Selective Service System. I have outlined several of these in the statement. And most men are just not willing to give the U.S. Government a second or even a third chance to slander them and to call them insincere or disloyal or worse.

The tales that one could tell of what draft boards have done are just amazing. But to give you an example, I know of many draft boards which had a policy of one conscientious objector's exemption per family, and that once the first son had gotten a conscientious objector exemption, nobody else in that family could get one.

The final thing I would like to say is that there has been a good deal of research into the Truman Library into the records of the Truman Amnesty Board that granted a very limited amnesty in 1947. And those records go to show that most of the men who the Amnesty Board would not recommend for pardon because these men supposedly had serious criminal records—most of these men had only been arrested or even charged without being arrested, and that most of these serious offenders were various minor and technical violations of the draft law. They were offenses like not filling out questionnaires, or not going to a physical, and things like this. Now, these things are technical felonies, but, of course, most of the men who refused military service or civilian service during World War II, these men, of course, were very likely to have committed some technical violation of the draft law earlier, and it is just a disgrace that so many of these men were denied pardons, denied amnesty after World War II, because in addition to refusing to serve they had maybe not filled out a questionnaire or did not go to a physical examination.

[Mr. Mott's statement follows:]

STATEMENT PREPARED BY JEREMY MOTT OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

My name is Jeremy Mott. I am Midwest Secretary of the Central Committee for Conscientious Objectors. I have been a draft counselor for seven years, and editor of the CCCO *Draft Counselor's Newsletter* for four years. One part of our work at CCCO is reviewing the draft files of men facing prosecution for Selective Service violations, in an attempt to discover strong legal defenses which may lead to acquittal or dismissal. I have reviewed more than 200 draft files for draft refusers awaiting trial in the United States, as well as doing more than 100 file checks for draft refusers in exile. In addition, I am a conscientious objector myself. I was sentenced to five years' imprisonment, and spent more than 16 months in prison, for refusal to perform alternate service. So another important part of my work is counseling conscientious objectors in prison, on parole, on probation, or in alternate service. I am grateful to you for having asked me to speak about the need for amnesty for civilian draft refusers.

Please keep in mind that I support a general amnesty for all war resisters,

including those who are punished by military law as well as those facing civilian punishment. However, my personal experience and knowledge is limited largely to the problems of civilian draft refusers; so these men's needs is my subject.

According to statistics published by the Administrative Office of the U.S. Courts, 7728 men were convicted and sentenced for Selective Service violations during the nine years from fiscal year 1965 through fiscal year 1973—from the escalation of the Vietnam war until the end of inductions. Several hundred draft refusers will be sentenced during fiscal year 1974, and still more will surely be sentenced in later years unless amnesty is proclaimed. 3826 of the 7728 men were sentenced to prison. 3853 men were sentenced to probation, normally conditioned on performance of two or more years' civilian alternate service. 49 men were simply fined, or given token sentences.

In addition to the approximately 8000 draft refusers convicted and sentenced during the Vietnam war years, there are a few draft refusers whose cases are in court now, and there are many draft refusers who have not yet been brought to court. The Justice Department reported to Congress that in February, 1972, indictments or arrest warrants were outstanding against 4201 so-called "fugitive" draft refusers, most of whom are in Canada or other foreign countries. It is practically certain that several hundred additional fugitive warrants have been issued during the past two years. Furthermore, sometimes an exile's indictment or warrant is never placed on the court's fugitive calendar. Thus there may possibly be several hundred or even thousands of exiled draft refusers under indictment or warrant, who are not included among the 4201 reported by the Justice Department. 5000 is a minimum estimate of the total number of exiles from Selective Service prosecutions; the actual figure may possibly be as high as 10,000 or even higher.

Of course the figures given above do not include AWOL military personnel in exile. Nor do the figures above include the numerous draft refusers who are in exile even though the Justice Department has decided not to prosecute them. Most of these "needless exiles" have never been told that they have won their cases, and do not know that they may return scot-free to the United States if they wish. Surely, Congress should instruct the Justice Department and the Selective Service System that they must share the good news with every draft refuser whom they decided not to prosecute during the past decade. The letters should be sent by registered mail, both to the men and to their families. If this is not done, thousands of men will remain in exile or in hiding, for no legal reason whatever.

Who are these thousands of draft refusers who have been convicted or exiled during the Vietnam war years? They come from every part of the United States, as the courts' figures show. All races are represented among them. Many draft refusers are poor; a few are rich; most would best be descibed as middle-class. As for religion, though a great many American draft refusers are Jehovah's Witnesses, one may find members of every religious group—and of no religion—among the men sentenced for Selective Service violations during recent years. A survey of imprisoned draft refusers, done by the Prison Visitation Service, shows Roman Catholics, Quakers, Methodists, Lutherans, Mennonites, Brethren, Jews, Greek Orthodox, Presbyterians, Baptists, and members of a long list of other religious groups, as well as a large number without religious affiliations.

What does this diverse group of men have in common? Almost the only accurate generalization is that most draft refusers are conscientious objectors. This statement may surprise you, for it is well known that the Military Selective Service Act provides for exemption of conscientious objectors from military service. Why, then, have many thousands of conscientious objectors been convicted of draft refusal or exiled during recent years?

There are several reasons. First, the draft Act's narrow provisions exclude many conscientious objectors from legal recognition. To gain exemption under the Act, a conscientious objector must show that he will not take part in "war in any form." In other words, he must refuse to take part in all war. Many conscientious objectors—the so-called "selective objectors"—are willing to take part in certain wars which they believe to be just. No matter how sincere a selective objector may be, no matter how firmly his church may teach a doctrine that some wars are just and other wars unjust, Selective Service may not and will not exempt him. Surely, selective objection is the standard American ethic concerning participation in war. Only a small minority of Americans are conscientious objectors to participation in all war. Yet hundreds and hundreds of selective objectors have been sentenced to prison or exiled during recent years.

These men's actual "crime" is that they have not lied and said they were pacifist conscientious objectors, but instead have lived by the political ethic which they and most Americans profess. How can anyone justify punishing selective objection as a felony, thus denying civil rights to these men for the rest of their lives?

Second, many conscientious objectors, even if granted exemption from military service, cannot in good conscience perform civilian alternate service. These men often believe that *not* becoming a soldier is their moral right, even their religious duty. Such "non-cooperators" will not pay any fee, nor make any payment of alternate service or other labor, for legal permission to live by their beliefs. To a non-cooperator, to perform alternate sevice would be to acquiesce in the notion that conscientious objection is a privilege granted by the government, rather than an inalienable human right. Furthermore, many non-cooperators believe that a conscientious objector who performs alternate service encourages other men to become soldiers and helps military conscription to do its deadly work. Most non-cooperators are happy to perform civilian humanitarian work—provided that the work is not imposed as a substitute for military service. Yet thousands of these men have been imprisoned or placed on probation—with the result that they are convicted felons and many human-service occupations are forever closed to them. How can anyone justify this absurdity?

In preparing amnesty legislation, Congress should carefully consider the fact that thousands of draft refusers are conscientious non-cooperators. Any so-called "conditional amnesty," if conditioned on performance of alterate service, will be rejected out of hand by these men. And there can be little doubt that most other draft refusers would join the non-cooperators in rejecting a conditional amnesty—on the very practical ground that prison, probationary alternate service, or exile has been punishment enough and more. To be useful, amnesty must be granted without any punitive conditions whatever.

Third—and the most important reason why thousands of conscientious objectors are convicted or exiled—each year Selective Service denies recognition to huge numbers of conscientious objectors, even though they are opposed to participation in all war, and even though they are willing to perform alternate service. Many thousands of these conscientious objectors refused induction during the Vietnam war years. The Justice Department decided not to prosecute some of them; but most were prosecuted. A few of these men have won acquittal or dismissal when their cases came to court. However, the archaic, terribly harsh laws and precedents which govern conscientious objector cases in the courts ensure the conviction of most "unsuccessful cooperators" who seek vindication.

For example, if a conscientious objector first presents his CO claim to the draft board after he has been ordered to report for induction, his CO claim is worthless as a legal defense. (See *Ehlert* v. *U.S.* Sup.Ct., 1971, 402 U.S. 99.) This will normally be true even if the draft-board clerk told him to wait until his induction order came before filing his CO claim. Since the man usually cannot prove that the clerk thus misled him, he will be convicted and sentenced in court as a felon—all for following the advice of the Selective Service System!

For another instance of the series of traps which a conscientious objector must avoid if he wishes to have a worthwhile legal defense, consider the judicial doctrine of "exhaustion of administrative remedies." As this doctrine is applied in draft cases, a CO normally will not be allowed to present his defense in court unless he has appealed within the Selective Service System to the state appeal board. After the local board has issued a 1–A card, there is a 15-day deadline for requesting an appeal to the state board. Thus a man away from home on a brief vacation, who cannot reply to his mail, may lose not only his right of appeal but also an opportunity for presenting a legal defense in court. Between 1966 and 1971, most state appeal boards almost never granted conscientious objector exemptions. Many appeal boards based their decisions on secret résumés rather than draft files; many appeal boards spent less than a minute deciding each case before them. Nevertheless, the court normally will summarily convict a man who failed to use the useless procedure of appeal to the state board. The actual "crime," for which such a man becomes a third-class citizen, is his failure to go through a star-chamber proceeding which would deny his claim in closed session on the basis of secret evidence.

During the years 1969 through 1971, when draft cases flooded into the federal courts, several of the harshest legal doctrines affecting conscientious objectors were made less stringent by concerned, knowledgeable judges. Now that the draft and its inequities have faded from public and judicial concern, however, such old vindicitive precedents as "exhaustion of administrative remedies" are

returning as strong as ever, if not stronger. For example, in *U.S.* v. *Bush* (CA7 1973, 6 SSLR 3133), the Seventh Circuit Court of Appeals upheld the conviction of a conscientious objector who *did* exercise his appeal rights in a fruitless effort to gain the CO exemption guaranteed by statute. What was the basis for the *Bush* decision? Two years before he finally lost his 2–S student deferment, Donald Bush was classified 1–A when out of school for a brief period—and he did not appeal for CO exemption at that time, since he was about to get his 2–S back. The Court held that Bush's failure to appeal *in 1966*, when he was briefly out of school, prohibited him from arguing in court that Selective Service gave him the wrong classification *in 1968*—even though Bush did appeal in 1968.

Donald Bush has not yet gone to prison, apparently because the Supreme Court took an interest in his case and ordered the Seventh Circuit to reconsider. James Bjerkan, another recent victim of judicial disregard for the rights of conscience, is not so lucky. Bjerkan is in prison now, even though he is a conscientious objector who appealed to the Presidential appeal board, is qualified for exemption under the law, and is willing to perform alternate service. In its semi-secret, unpublished opinion in *U.S.* v. *Bjerkan* (CA7 No. 72–1301, 3/9/73), the Seventh Circuit Court of Appeals upheld Bjerkan's conviction and the denial of CO exemption to him. The Court felt that Selective Service was justified in its refusal to grant the CO exemption, partly because James Bjerkan had not appealed a 1–S(C) student deferment which the local board had given him one year before he filed his CO claim. Yet if Bjerkan had filed a CO claim and appealed a year early, the Selective Service System would have been legally required to give Bjerkan a 1–S(C) classification anyway. Thus James Bjerkan is now in prison for the "crime" of failing to ask Selective Service to break the law and deny him a student deferment.

It is not true that Bjerkan's willingness to accept the Congressionally-mandated 1–S(C) deferment was the major basis of the Court's decision, however. Most of the *Bjerkan* opinion is devoted to a lengthy judicial finding that Bjerkan is "insincere," partly because he filed his CO claim only a few months before his student deferments did finally expire, partly because though brought up a Lutheran his CO claim reflected ethical rather than strictly religious beliefs, partly because he became a teacher after majoring in accounting in college. Bjerkan did not seek a 2–A occupational deferment for his teaching job; but the Court did not care about this as it sought excuses to malign him. Unfortunately, cases like *Bjerkan*, in which the courts have sought the flimsiest of excuses to uphold Selective Service's denial of CO exemption, are not at all unusual.

In writing amnesty legislation, Congress must take especial notice of the long and sorry history of judicial militarism and bias against conscientious objectors, which has brought about the legal labyrinths touched on above and many more. Considering the usual fair-mindedness and independence displayed by the federal judiciary in most kinds of cases, there is no reason to suppose that any other group would do a better job of recognizing conscientious objection. In fact, recent history shows that other groups usually do an even worse job of judging conscientious objectors. I am personally familiar with several instances where Selective Service boards adopted a policy of "one CO exemption per family," and denied CO exemption to a man because his older brother or his twin brother had already received CO exemption. Many draft boards granted CO exemption only to members of pacifist churches, such as Mennonites. Some draft boards granted CO exemption only to men who did not belong to pacifist churches. Some draft boards granted CO exemption only to men who filed their claims at age 18. Some draft boards refused CO exemption to any man who insisted on affirming, rather than swearing, that his testimony was true. Some draft boards refused CO exemption to any CO who explained that he would be morally obliged to refuse induction if classified 1–A. One could go on and on.

Still another group that was even more biased against conscientious objectors than the federal judiciary was President Truman's Amnesty Board, which pardoned only about 10% of those convicted of Selective Service violations during World War II. The Board pardoned almost no Jehovah's Witnesses and very few noncooperators. And this Board heaped ignominy on itself an dthe U.S. Government by falsely reporting that many World War II draft violators had serious criminal records antedating their draft-refusal convictions. As the Board's records have revealed, the truth was that most World War II draft refusers had committed minor violations of draft laws before they refused to perform military or civilian service, but only a handful had ever been accused or convicted of any serious crime not related to their war resistance.

If only because all groups which judge conscientious objectors tend to look for excuses for maligning and punishing conscientious objectors, a case-by-case amnesty is unworkable. Some conscientious objectors would refuse on principle to take their cases before any board or judge who was charged with separating "sincere" and "insincere" war resisters. Many other men, already taught to distrust such selection procedures by their own mistreatment at the hands of draft boards and courts, would be unwilling to give the U.S. government another chance to slander them. The huge cost of hiring a lawyer, the cost of travel to hearings, and the red tape and endless paperwork would deter many potential beneficiaries from seeking amnesty through any case-by-case procedure. A useful amnesty must be granted to all, without any further disgraceful attempts to brand some draft refusers as insincere, disloyal, or worse. A useful amnesty must be a general amnesty.

The legal traps set for conscientious objectors who have filed CO claims and pursued appeal procedures are all as nothing compared to the fate in court of a conscientious objector who has never presented his claim to the draft board. Very often, of course, the man failed to file his claim because a Selective Service clerk or a draft-board member told him that a CO claim would be of "no use," that "only Quakers and Mennonites are eligible for exemption," or some similar nonsense. Sometimes a man looked at the second question on the Special Form for Conscientious Objector—formerly this question was "Do you believe in a Supreme Being? __Yes __No"—and decided that his unorthodox religious views made him ineligible. Whatever the reason for a man's failure to present his CO claim to the draft board, he should expect to be forbidden from raising his conscientious objection as a legal defense. Thousands of these conscientious objectors who have never filed claims have been convicted or exiled in recent years. For many of them, the actual "crime" was a foolish trust in the lies and misleading advice given them by government officials, or a naive lack of awareness concerning the deceptive purpose of former versions of the Special Form for Conscientious Objector. How can anyone, knowing these things, oppose amnesty and thus sentence these men to a lifetime as felons or exiles?

Some may dispute CCCO's conclusion that most of the men convicted and sentenced for draft refusal in recent years are conscientious objectors. True, some draft violators will not call themselves conscientious objectors. However, if one asks these men why they refused to be soldiers, most will reply by explaining their ethical, religious, or political opposition to the Vietnam war or to war in general. In the federal prisons, all Selective Service violators (except Jehovah's Witnesses) are universally called "conscientious objectors" or "COs," by other prisoners and staff alike. This label "conscientious objector" certainly does not reflect the draft classifications held by most of these men, but it does reflect the true reason for their imprisonment.

Some will point out that most draft refusers had mixed motives for their actions: they wished to avoid being killed, as well as to avoid killing. We agree; this is true. Yet we must point out that practically everyone has mixed motives—including practically every man of military age during the Vietnam war years. Unquestionably, many U.S. soldiers had misgivings during the Vietnam war years; many soldiers tried to avoid both killing and being killed.

And we must point out that deferments of many kinds were easily available throughout the Vietnam war years. Millions and millions of men were deferred until over-age, whether as students, as teachers, as fathers, as persons disqualified from military service (4–F or 1–Y), or whatever. Most convicted and exiled draft refusers could have obtained and held deferments, if their sole motivation had been to save their own lives. However, as any experienced draft counselor knows, many conscientious objectors and draft refusers deliberately spurned available referments, so that they might better oppose conscription, war, and the Vietnam war.

If you still are not convinced that most of the convicted and exiled draft refusers are conscientious objectors, remember that practically all these men were repeatedly offered "amnesty" if they would join the military. Until June, 1973, any draft violator facing prosecution could expect to be offered a deal: if he would enlist or accept induction, the Selective Service prosecution would be dropped. As the courts' figures on dismissed indictments show, thousands of men accepted such deals and joined the military after they had been indicted for Selective Service violations. It is probable that an even larger number of men accepted such deals before they were indicted, in some instances even before they were arrested. Those draft refusers who were eventually convicted or

exiled had all rejected these informal "amnesty in return for military service" arrangements. What evidence could better show that these men are conscientious objectors?

While working on an amnesty for Vietnam-era draft refusers, Congress should take care to include another, often overlooked group of men who need amnesty: the men convicted and sentenced for draft refusal in the years before the escalation of the Vietnam war. These men, too, are almost all conscientious objectors; and they got into trouble with the draft law for reasons quite similar to those which brought the Vietnam-era refusers into the courts. Between 1948 and 1964, according to the federal courts' statistics, 4328 draft refusers were convicted and sentenced. About 17,800 draft refusers were convicted during the World War II years, from 1940 to 1947. Only about 3000 of the World War II violators, and almost none of the post-World War II violators, have been pardoned. Thus about 24,000 draft refusers convicted from 1940 to the present time are still without the usual rights of citizenship. This situation is a disgrace to our nation. Most European countries amnestied their World War II draft refusers immediately after the war. France amnestied its conscientious objectors and deserters of the Algerian war by 1966. It is high time for the United States to clear up its huge backlog of political and religious "criminals" by amnestying all its draft violators.

What would an amnesty mean to the draft refusers? The group who would benefit most from an amnesty, of course, are the 134 men now in prison for draft refusal, as well as the unknown number awaiting execution of their prison sentences. (The figure stated was furnished by the Federal Bureau of Prisons, and is accurate as of January 15, 1974.) A general amnesty would bring about these prisoners' immediate release. Even a general commutation of prison sentences for draft refusal—as was done in Australia in 1972—would be of great help to the prisoners and their families, as well as those facing probable imprisonment in the future.

I often counsel men who will soon surrender to serve their prison sentences. Usually the draft refuser's wife takes part in the conversations, and often their young child or children are present. Even for a calloused "old hand" like me, it is disturbing to talk with a conscientious objector who may have refused induction in 1968 or even earlier but faces imprisonment in 1974 or later. After all, the United States has been officially at peace for more than a year; all the American prisoners of war were released a year ago; inductions were ended a year ago; tens of millions of Americans now agree with this man's opposition to the Vietnam war; and the man would usually be willing to perform alternate service, if allowed to do so. Yet he will soon be torn from his wife and children, and locked up under armed guard for a year or even two years, then released on parole to face life branded as a "con." Of course he will do no real work, and earn no real wages, during his imprisonment, which will cost American taxpayers at least $5000 annually. Meanwhile his family will beg from friends and relatives. In 1968, I was among more than 700 draft refusers in the federal prisons—but at least we knew then, even though we didn't approve, that our imprisonment was a small part of an immense American war effort. What point does the imprisonment of conscientious objectors prove now? Is it simply a welcome opportunity for the U.S. government to practice cruel treatment of its citizens?

Nearly 2000 draft refusers are now performing probationary alternate service, while thousands more are serving ordinary probation and parole sentences. For all these men, an amnesty would mean the end of petty but burdensome restrictions, such as the requirement that one ask permission of a probation officer before traveling. For the conscientious objectors performing alternate service as a condition of probation, an amnesty would also mean the end of immense personal and economic hardship in many cases. No longer would counselors have to help a probationer find two full-time jobs—one low-paying job to satisfy the alternate-service requirement, and another better-paying job to enable the man to support his famly and pay his lawyer's bills.

Let me note in passing that an amnesty should include an opportunity for immediate discharge for those men who were drafted into the military and remain there. Also, an amnesty should include the immediate release of conscientious objectors performing alternate service under the orders of the Selective Service System. These simple but necessary actions were done in Australia in 1972.

By far the largest group of draft refusers who need amnesty, however, are the tens of thousands of men who have completed their prison or probation sentences

for Selective Service violations, but still suffer civil disabilities as convicted felons. It is true that a few of the 8000 draft refusers convicted during the Vietnam era, as well as a very few of the earlier refusers, were sentenced under the Youth Corrections Act. This law expunges their felony records, when they have served their sentences. These men probably do not need amnesty, nor do those men whose convictions were reversed by appeals courts. Nevertheless, my estimate is that about 7,000 of the draft refusers convicted in the Vietnam years, and 17,000 or more of the refusers convicted earlier, will be felons until they die unless amnestied.

A felon's civil disabilities vary from state to state, depending on the vagaries of the state laws which define most civil rights. In almost all states, a felon may not vote or hold public office. In all but a few states, a felon may not be licensed for most of the many occupations which the state licenses. Thus, in many states, a convicted draft refuser cannot be a schoolteacher.

Civil-service jobs are usually closed to felons. At least three states will not license a felon to drive an automobile. According to legal reference books, in some states a felon may not own real estate, or adopt a child, or be a guardian or an executor under a will. Though some of these civil disabilities are widely ignored in practice, many are enforced, and the list seems endless.

In some states, a felon may apply to the governor for restoration of the rights denied him by state law. However, some governors rarely grant such petitions; many states seem not to have such procedures; and nothing short of Presidential pardon or an amnesty will restore those rights denied by federal law. As a matter of fact, some state laws specify that no pardon will restore certain rights. Only Congressional amnesty can restore convicted draft refusers to full citizenship.

Perhaps as bad as or worse than the civil disabilities specified by law is the occupational discrimination which many convicted draft refusers discover. Even when no law forbids hiring a convicted draft refuser, many employers will refuse to hire him. Amnesty probably would alleviate this situation, by setting a governmental example of fair treatment which private employers would follow.

Perhaps some of you are wondering why this testimony concentrates so heavily on the problems which felony records cause for convicted draft refusers. After all, there have been only two amnesties for draft violators in American history: the general amnesty of World War I violators in 1933, and the partial amnesty of a few World War II violators in 1947. Thus you may suppose that the Civil War conscientious objectors, and the numerous conscientious objectors of the Revolutionary War and the French and Indian Wars, must somehow have managed to adjust to their felony records. This supposition seems sensible, but it is wrong.

Conscientious objection and draft refusal were not punished as felonies before World War I. Most Civil War conscientious objectors in the North were never prosecuted; President Lincoln busied himself pardoning and releasing conscientious objectors throughout the war. Those Civil War objectors who were prosecuted were tried by courts-martial, in both North and South. Though the courts-martial occasionally imposed severe penalties on conscientious objectors, these penalties apparently could not and did not include the civil disabilities of a felony conviction. Besides, the penalties imposed by Confederate courts-martial were legally erased when the Confederacy lost the Civil War.

During the War of 1812, the Revolutionary War, and the French and Indian Wars, each state or colony had its own system of militia conscription. Conscientious objectors who refused to serve when the militia was called out for these wars, as well as conscientious objectors who would not drill with the militia in peacetime, were normally fined by petty courts. Usually the fines were heavy only in time of war. Many conscientious objectors refused to pay the militia fines. Seizure of property to satisfy the unpaid fine was the usual punishment imposed on these non-cooperators, though a few who refused to pay militia fines were imprisoned. It seems clear that felony civil disabilities were first imposed on American conscientious objectors in the Twentieth Century. (For an excellent detailed history of early American conscientious objection, see Peter Brock's *Pacifism in the United States: From the Colonial Era to the First World War.*)

Last but by no means least, of course, is the effect an amnesty would have on the so-called "fugitive" draft refusers. Though no one seems to know for sure how many "fugitive" draft refusers are under warrant or indictment, it is clear that most of them are in exile, and in *permanent* exile. Even a general,

unconditional amnesty probably would not induce most exiled draft refusers to return to the United States to live. After all, most draft-refuser exiles are doing quite well for themselves in Canada. Many of these men will surely be prominent in Canadian public affairs in coming years. By driving thousands of draft refusers and their families out of this country, the United States government has ensured that Canada will be less friendly to the United States than it has been in the past. This damage has now been done, and it probably is in large part irreparable.

However, a general amnesty would bring one great benefit to the permanent exiles, as well as their friends and relatives who remain in the United States. An amnesty would enable the exiles to visit freely in the United States, without subterfuge and without the ever-present risk of arrest. Only a few days ago, FBI agents arrested a draft refuser named Allen Kelly at his father's funeral in Rock Island, Illinois, to which he had traveled from British Columbia. An amnesty would prevent the recurrence of such disgraceful events as this, as well as put an end to the border arrests of draft refusers which now take place dozens of times each year. Also, an amnesty would stop the humiliating delays and interrogations and investigations now imposed on young Americans who are trying to re-enter their own country after traveling in Canada.

Furthermore, there are many exiles who do wish to return permanently to the United States, even though these men are a minority of all draft refusers in exile. An amnesty can do nothing more important than allowing the return of those exiles who do wish to return: the civil rights activist torn from his American Black community, the engineer and the musician who cannot find work in their chosen occupations in Canada, the only child who always wanted to join his father's business in Chicago. Surely, it is in the interest of all Americans that these men come home, without further delay. Only a general amnesty can make this happen.

One major fault of all amnesty legislation so far proposed is the lack of proper provisions for the expatriate draft refusers, the men who have given up their U.S. citizenship and have no desire to resume it. Section 212(a)(22) of the Immigration and Nationality Act states that aliens may not legally enter the United States "who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in a time of war or a period declared by the President to be a national emergency . . .". The United States has been in a Presidentially declared state of national emergency continuously since 1950. Under the law just quoted, any Vietnam-era draft refuser who has been naturalized as a Canadian citizen (or a citizen of any other foreign country) will never be able to set foot legally in the United States again. Even if the man could win his draft case in court, even if he used legal means of avoiding the draft when he went to Canada, even if he is willing to serve a prison or probation sentence, a draft refuser who has become a Canadian citizen is subject to exclusion or deportation from the United States. The U.S. government has the power to waive an alien draft refuser's deportability under the Immigration Act—but such waivers are rarely if ever granted to Vietnam-era refusers, and waivers may be granted only to aliens seeking visas for temporary residence in the United States.

Of course, deportation proceedings under the Immigration Act do not prevent prosecution under the Selective Service Act. Thus most exiles who have become Canadian citizens face *both* prosecution and deportation, should they ever be arrested (or surrender) within the United States. Often an exile becomes a Canadian citizen without even knowing that his naturalization means that he will never be able legally to enter his native land again. Repeal of the shameful provisions of Section 212(a)(22) of the Immigration and Nationality Act is an essential part of any meaningful amnesty. Of course—as some amnesty bills now propose—those exiles who have given up their U.S. citizenship should be allowed to become U.S. citizens again if they wish to do so. But those exiles who wish to remain foreign citizens, and those who will become foreign citizens in the future, must be allowed to enter the United States freely, under the same rules as other aliens.

Let me point out that the Central Committee for Conscientious Objectors helped lead the unsuccessful campaigns for amnesty which followed World War II and the Korean War. We are continuing to work for amnesty now, when amnesty is needed more than ever before; and we hope that this time the amnesty campaign will be more successful. CCCO staff members serve on the steering committee of the National Council for Universal and Unconditional Amnesty. CCCO publica-

tions, such as *News Notes*, have explored the amnesty issue in depth. It is clear that much of my work, and much of the work of several other CCCO staff members, would come to an end if amnesty were proclaimed—for our counseling services would no longer be needed by the Vietnam-era draft refusers and in-service resisters. However, this unemployment would be most welcome; for we would be freed to do more counseling with those men and women now in the military who are becoming conscientious objectors.

Let me close by asking a few questions, which I hope you—and all concerned Americans—will ponder while amnesty legislation is under consideration. Should any person be compelled by law to kill, and to risk being killed? Should any person be forced to take part in a war or join the military? Should someone be drafted, even if military service may destroy his (or her) integrity, his (or her) life, or both integrity and life? How can our nation boast of its religious liberty, so long as the laws punish those who will not kill, without regard for the demands of conscience and religious teaching? How can our people ever solve its serious problems, so long as the laws prevent conscientious objectors from exercising the rights of citizens? Is the periodic sacrifice of our sons truly necessary for the health of our government and our society? If so, and if we do make such a sacrifice once in each generation, Whom do we worship, Moloch, or God?

Mr. KASTENMEIER. Does that complete your statement, Mr. Mott?

Mr. MOTT. Yes.

Mr. KASTENMEIER. Thank you both for your statements, Mr. Mott and Mr. Musil.

Someone raised the question before whether those men who were guilty of draft violations, and for one reason or another, had served in prison, would be now supporters of amnesty for others who had not gone to prison and paid that sort of penalty. What is your view, Mr. Mott, on that question?

Mr. MOTT. Well, I did a prison term myself for conscientious objection. And one of the things that I would most like to see in American life is an amnesty for all those who refused to serve, both military and civilian violators. And I have known——

Mr. KASTENMEIER. Without discrimination to those who have already paid penalties?

Mr. MOTT. Without any discrimination.

I have known scores of men who have gone to prison for draft refusal or for refusal in the service during these last 10 or 12 years. I know of only one who feels guilty about what he did. And I do not know any, I have never met one, who would not support an unconditional amnesty for all, both those who have already served some kind of sentence or other, and those who have not.

Mr. KASTENMEIER. Would you both agree that up to the present time the general citizenry of the country has not been particularly affirmative with respect to at least general unconditional amnesty if any at all. In terms of the service of others in the Vietnam war, and generally, with the exacerbation due to the war in Vietnam, that there has been a very strong climate against the forgetting that amnesty is supposed to represent? What sort of view do you see? What are you exposed to, from others? From veterans' organizations who are represented here and apparently represent the views of perhaps millions generally reflecting negative views with respect to amnesty. Do you not perceive this every day? Or do you see a change in attitude?

Mr. MOTT. We see these attitudes against amnesty. But we see others too. I am a resident of Illinois. And Illinois had a new constitution a couple of years ago which restored almost all civil rights to people with felony convictions once their sentences were completed. And

after that constitution and law took effect several newspaper reporters did some polls asking many of the large employers in Chicago, would they be willing now to hire somebody who had a felony conviction for draft refusal? Of course, usually the law had never prevented this, but there had been many employers who would not have done so. And they found a great willingness on the part of most employers to do this kind of hiring.

And then they went to the various State licensing boards and interviewed the various State licensing boards that licensed people for a whole myriad of occupations in Illinois, and said to the staffs of these licensing boards now that you have the legal power, if you wish, to license someone with a felony conviction for conscientious objection, do you think that your board would do so? And at all but one of the Illinois license boards the staff said, "Yes; we think that we would." As a matter of fact, one board that licenses teachers said, sure, we have already licensed some teachers who have felony convictions for draft refusal. The only licensing board in the State hospital staff that gave a negative response was the one that licensed people in the construction trades.

Mr. MUSIL. Mr. Chairman, I would like to add a word to that.

I may have to reiterate something I said a little bit earlier. But there have been recent Harris polls, as you probably are aware, which showed a majority of the American public would be in favor of a conditional amnesty and 30 percent would be in favor of an unconditional amnesty. I think for the reasons there has been more amnesty sympathy, I refer back to my remarks about the coordinated campaign on the part of the administration to decrease the number of draft resister or deserters to cover up their war policy. To claim that it was a war with honor. While Charles Colson or Pat Buchanan could get an article in the New York Times that said there were only 7,000 or 8,000 involved, I am reduced to writing letters to the editors.

Someone else in the hearing mentioned that when the President sneezes he commands national television. I am a novice at such hearings. This is the first congressional hearing I have ever testified before. I have waited for 10 years to get some things off my mind. And I feel very frustrated that there is not a more adequate forum, with all due respect.

Mr. KASTENMEIER. You must say that the President has commanded considerable attention in our parent committee, the Judiciary Committee, lately.

Mr. MUSIL. And just to followup on that, I think if people keep in mind that it was the likes of Charles Colson who branded deserters as malingerers and cowards and opportunists, then the American people will begin to see that it was a campaign by men who were dishonorable themselves trying to cover the tracks of their own policies.

I still repeat the question, who was responsible for all of those desertions? For the rampant epidemics of spinal meningitis? For beatings in stockades? We have found many men who were hanged by their wrists at Camp Pendleton. I think you remember Mike Wallace did some coverage on that on television back in 1968, but we still see some people suffering from the effects of that kind of treatment. I think eventually the Congress will have to investigate the conduct of the entire Armed Forces during the entire Vietnam era. And I think what they will find will not be pleasant.

As I speak around the country about amnesty and my experience in the military and my work with veterans and deserters and the absent without leaves, the account of life in the military causes shock and outrage in the average person. How will we respond to amnesty, when the myths that have been perpetuated by a World War II generation that is living in the clouds, that have kept young men down for so long, are broken? Then I think people will see what this country carried out for so long, and I think they will very quickly turn around, and you will see Harris polls and more than Harris polls welcome an amnesty. I am quite convinced of that. But it will take some time and some sneezes on the part of us in this room to get the attention to the truth.

Mr. KASTENMEIER. I am going to yield at this point to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. I want to thank both of you for your testimony. And I will talk with Mr. Mott first, and then I will come to Mr. Musil.

On page 4, could you give us some idea of the number in that particular category? At the bottom you say that hugh numbers of conscientious objectors, or people who have applied for that, were denied that status by the Selective Service. And the officials of the Selective Service this morning indicated that somehow they did not collect information on the people who were denied conscientious objector status, but just on those who were successful. Would you be able to fill in here something about how many?

Mr. MOTT. We could not give much better than an order of magnitude, because these records have not been kept by the Selective Service System. Most of the files have been destroyed now. We can give only an estimate. I estimate that tens and tens of thousands—it is in the tens of thousands, the number of conscientious objectors who filed their claims and were not recognized.

Now, there were many reasons for that. Some were selective objectors and were not qualified under the law. Some filed their claims after the induction order was issued, and it was too late. Some just were not recognized even though they did everything on time and used their appeal rights and everything else. Some of these men swallowed their consciences and went into the Army. Some got other deferments so that they never showed up in the induction refusal figures. Thousands probably then did succeed in getting some other deferment. Some went to court and won. And some went to court and lost.

Mr. DRINAN. I wonder if some of those people are involved in the bargaining that you mention on page 10. You say that some draft refusers went and accepted the promise of the military that if they accepted induction that the charges against them would be forgiven. I assume some of those individuals were in that group.

Mr. MOTT. Some conscientious objectors, if nothing would work out within the Selective Service System, would then go into the Army instead of facing prosecution, but not most, at least in my experience. But some did so. One reason why some did so was that the Supreme Court said that if you filed your conscientious objector claim after the induction order had been issued, in that case you were supposed to go into the Army and seek a conscientious objector discharge from within the Army. That is the *Ehlert* case which I mentioned in my testimony. But I have counseled what we called in our jargon *Ehlert*

conscientious objectors, scores of them, men who filed their conscientious objector claim after the induction order was issued. And at least among those I have counseled and the other counselors I have talked with, more of them did persist in their refusals of induction than that went into the Army. Although there was a good-sized number in each category.

Mr. DRINAN. On another question, I was quite intrigued with what you said at the bottom of page 10: "Most European countries amnestied World War II draft refusers immediately after the war." And then you mentioned France. I am sure that your organization would have more information on the international situation. And I think that would be helpful to the committee. Would you have any generalization as to whether or not the United States is way behind in this or what?

Mr. MOTT. There really is not much question that the United States is way behind other countries. I am not personally that familiar with other countries. What I am more personally familiar with is how we are way behind in our own history from earlier wars. And in earlier wars there have been quick amnesties, or before this century there was not really a need for amnesties, once the punishment was over.

Mr. DRINAN. In connection with that, I know that your organization applied for amnesty after the Korean war unsuccessfully, as you noted here. Would you give us the background of that?

Mr. MOTT. I was a little child at that time, and I am afraid that I cannot say much about it now. I could dig things out of archives and records. I just know that we were one of several groups that did seek amnesty. Of course, compared to the Vietnam war, there were a very small number of draft refusers and a tiny number of deserters who were deserters for conscience' sake during the Korean war.

Mr. DRINAN. It would be helpful, though, because the witnesses today were using this as a precedent, that we had no amnesty after the Korean war.

One other question, Mr. Mott.

You mention on page 13 that there was a general amnesty after the First World War given by President Roosevelt in 1933. What was the legislative picture there, and what were the forces building up that apparently President Roosevelt responded to when he came into office the first time?

Mr. MOTT. I could not possibly answer that offhand. I believe it was a purely executive amnesty, just a wholesale grant of executive clemency. A good number of individual World War I violators had been pardoned earlier during the 20th century by other Presidents. And I believe President Roosevelt largely completed that task.

Mr. DRINAN. Mr. Musil, a couple of questions. I am familiar with the separation program numbers, the SPN, where they have all these secret codes, so to speak. Do you have any specific information as to whether the separation program numbers are tied to some conscientious objectors? You mentioned that here. But are there any ball park figures?

Mr. MUSIL. There were specific separation program numbers codes for conscientious objection.

I would presume——

Mr. DRINAN. Is there a separate code for them?

Mr. MUSIL. Yes, there is. My own discharge is coded conscientious objector. I would not want that removed. But that is my own business. However, it should match the number of men who were discharged as conscientious objectors, which I believe was approximately 14,000 or so. Most of them, however, are for absolute insane categories, apathy, obesity, chronic underproducer, men who have just been slandered and driven out with bad discharges without any reason.

I just wanted to put in a word—you asked about the history of the organization and the previous amnesty effort. And one thing I wanted to underscore is that officers named to look at the Central Committee for Conscientious Objectors military and draft counseling in 1968 discovered that through the history of our organization that our concerns have broadened, and we have gone through a growing process ourselves. Most of the amnesty action around World War II or Korea was specifically concerned with Selective Service violators, and particularly those persons who did not qualify under the law at that time, who were nonmembers of the pacifism movement, and so on. One good thing at least that we can say about the Vietnam war is that most of those in organizations like the Central Committee for Conscientious Objectors will have better understood the plight of those who did not come from a traditional religious pacifist middle class background. And we have extended our concern for a number of years now for all kinds of violators, because as I indicated in my own testimony, I was able to receive some kind of relief. I did not end up in Fort Leavenworth only thanks to a kind of an elite education before I got in the military, and as I said, had I been an ordinary GI, I would either have been shipped over, with whatever consequences, or more likely have been court-martialed.

So I just wanted to underscore that point, that previous amnesty efforts tended to be directed at Selective Service violators of a very traditional middle class background. And I think the question before us today is far broader and far more unprecedented. And I said in our statement that I want to urge amnesty for all sorts of people. There is a man who works in our organization who filed a discharge application years before I did in the military. The result in his case was 14 months in Fort Leavenworth. By the time I came along things were somewhat easier. I want amnesty for him, Dave Brown. But I also want amnesty for a guy who was being abused and called a nigger by his draft sergeant, and he could not stand it any more, and punched that guy out and went over the hill.

I think that the record of racism in the Armed Forces is clear. The Department of Defense Task Force on the Administration of Military Justice makes it clear that there is systematic racism throughout the Armed Forces, and not only as a result of the racism prevalent in our entire society.

So that in dealing with this question I think if we focus narrowly on the terms of deeply held moral and ethical beliefs, the only people who will get satisfaction are those who are articulate and middle class and come from traditional pacifist and other kinds of background. I think that is the cycle we have to break in this country and recognize that we are divided by class and by race and it was the least fortunate who had to serve in this war and if there is to be justice there will have to be some recompense for that.

Mr. DRINAN. One last question. I understand on page 15 that you feel that H.R. 3100 and H.R. 236 are inadequate. But once again, somebody with a discharge that is less than honorable has to go somewhere to have that charge changed. And we have to have a tribunal or an administration or a regulatory agency. Do you or your colleagues have any idea how we can do this while also giving what you term automatic general amnesty?

Mr. MUSIL. It seems to me that the question of upgrading all discharges is rather simple. The Pentagon is able to turn out discharges with five categories now, and if there was legislation enacted that required them to change all those discharges to honorable——

Mr. DRINAN. I think I had in mind a tribunal outside of the Pentagon. And I think that they would be resisting all types of things and dreaming up new ways of lawlessness. Do you contemplate that this can be done by military methods? Do you contemplate that the existing military would, if the Congress and the President so decreed, in fact change the discharges?

Mr. MUSIL. If they are still responsive to civilian control, which I realize there is increasing doubt about, I imagine that they would.

Mr. DRINAN. You think, in other words, that we do not need this extra civilian tribunal, but that the military itself can take measures to rectify these things?

Mr. MUSIL. If ordered to do so.

Mr. DRINAN. Thank you very much, sir.

Mr. KASTENMEIER. Thank you.

Just one further question of Mr. Mott.

You served in a Federal institution as a result of violations?

Mr. MOTT. That is right. I served 16 months in three Federal prisons and 10 in county and local jails, sir.

Mr. KASTENMEIER. Were you, to the extent that you can speak concerning others, subjected to incarceration which was equivalent to other types of offenders, or was it more stringent or less stringent on you as an inmate?

Mr. MOTT. The conscientious objectors in the Federal prisons are mixed in with all the other Federal prisoners. And I think I can see why. The prison bureau does not want too many in one place, because they will cause trouble if they are all together.

There is only one major difference in the treatment of conscientious objectors in prison, and that is, though there is no written policy, the actual parole policy is very different. In the case of a draft refuser or conscientious objector in the prison, it really does not make much difference how he behaves or what he did before he was in prison or anything like that, he will be paroled after 1 to 2 years in prison.

Mr. KASTENMEIER. This subcommittee is also charged with the responsibility of prison reform. Among other things we have determined, is that in the last couple of years there are very few draft offenders who were given the advantage of what is called pretrial diversion. In other words, nearly all Selective Service offenders were sentenced, rather than diverted to other programs, notwithstanding the fact that they otherwise fulfilled the program requirements. And the question remains, to what extent were they subjected to discrimination within the prison system?

Mr. MOTT. Well, the business of pretrial diversion, of course, is a court matter. And I would say that conscientious objectors are treated by most Federal judges quite differently than an ordinary criminal defendant who comes before them. Some treat the conscientious objectors better in some ways, and worse in others. It is very hard to state a rule.

Mr. KASTENMEIER. Thank you, Mr. Mott and Mr. Musil, for your testimony here today.

Mr. MUSIL. One final thing I would like to say. I would just like to underline the urgency of this question. I have heard a great deal of discussion on whether it is premature or whether these hearings should have been held now or years ago. Those of us who resisted the war are no longer young. I have finally reached the age of 30. This question has dragged on far too long, and justice should have been done years ago. I recall reading your hearings on the war when I was quite a youngster. It had a deep influence on me. I think it is particularly the responsibility of those Members of the Congress who have opposed the war to seek amnesty with as much speed and determination and vigor as they opposed the war originally. And I hope that that will proceed quickly indeed, because Dick Bucklin is in jail, and Lew Simon is in jail. And nearly a million people need amnesty. And every minute of delay is tragedy to their young lives.

Mr. KASTENMEIER. Thank you for your statement. Obviously, the committee feels that it is proper to take the question up at this time. So to that extent you have succeeded.

Our next witness this afternoon is Col. Phelp Jones, the director of National Security and Foreign Affairs of the Veterans of Foreign Wars of the United States. Colonel Jones very graciously gave up his spot, which was the second spot this afternoon, to former National Commander O'Neil of the American Legion. The committee is very appreciative of that.

Your own statement, Colonel Jones, is brief. You may proceed to read it verbatim if you wish. You also have certain attachments to your statement which you may desire to have included in the record.

TESTIMONY OF F. P. JONES, COLONEL, U.S. ARMY (RETIRED), DIRECTOR, NATIONAL SECURITY AND FOREIGN AFFAIRS, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. JONES. Thank you very much for your courtesy, Mr. Chairman. It is, of course, a pleasure to be here. I will abide by the rules you indicated earlier that witnesses are limited to 10 to 15 minutes. And I am mindful also that you must speak in a loud voice if you hope to be heard, in a clear voice if you hope to be understood, and briefly, if you hope to be appreciated. I will follow all three admonitions.

First of all, as you know, the Veterans of Foreign Wars of the United States is composed of 1.8 million individuals who serve overseas in the defense of their country. We are meeting now in Washington, as a matter of fact, and we hope to see you, other members, to include members of the subcommittee, and the full committee, at our congressional dinner next Tuesday night. We certainly hope you will join us.

I am here in behalf of Mr. Ray Soden, of Chicago, Ill., who is our national commander in chief.

I have attached to my formal statement, which I will summarize, our resolution No. 459, which was passed at our 1973 annual convention last summer at New Orleans, La., August 17 to 24, 1973. In this resolution we call for unequivocal opposition to both general and selective amnesty, and we further state that we will never relinquish, dilute, or compromise this position.

In the formal statement I have listed a series of actions which have been termed "amnesty," from the Whiskey Rebellion of 1795 through Korea. I will not recite those again. If you, Mr. Chairman, or other members care to question me, I will produce the best figures on it I can.

Our principal point is that there has never been unconditional amnesty for draft dodgers after any war, from the founding of the Republic through Korea.

Now, our rationale for the admittedly strong position we take follows:

No. 1, is the point of national unity. It is our view, and a strongly held view, that to welcome back whatever the number—and we fully understand valid numbers here are difficult to get at—whatever number—would be more divisive than healing. The memories are far too fresh of the return of the prisoners of war and their stories of what happened to them, as well as the accounts given to the Senate Foreign Relations Committee by the National League of Families of Missing in Action/Prisoners of War in Southeast Asia.

The notion of justice is hard to articulate. And perhaps this is one of the things on which we polarize so obviously in this room today. We take the view that for whatever reason Vietnam took place, and however poorly it was managed or conceived, there are 56,234 dead Americans, 303,000 were wounded, of whom 150,000 were wounded very severely. I referred to the 566 prisoners of war returned earlier, and I have also made reference to the special, rather poignant condition of the nearly 1,300 men still missing in action.

The second point of our rationale, of course, turns on the rule of law. And that is something that I am certain is of central concern to this subcommittee and to your full committee.

No. 1. Today whatever one may say about the whole array of domestic problems confronting our country, the system of justice is working, however fitfully, however prodded by an alert and far-ranging press. I think it is fair to say—and we are getting daily affirmation of it—that the system of justice is working. It is our view that no American, no matter whatever his station in life may be, should neither expect more nor accept less than his fair day in court.

The notion of preferential justice is anathema to the patriotic members of the Veterans of Foreign Wars. We oppose after-the-fact justice. And it is that notion of elitism, I think, that strikes right at the heart of our central concern.

Additional to this motion of justice is what I would call full customer choice of wars. With automobiles today we are allowed a number of options which we may accept or reject as we see fit. I do not think this can apply to the supreme political act our Nation can engage in, however wisely or unwisely conceived, which is, of course, going to war.

As to national security, I could not imagine anything more hurtful today to the studied, calculated risks we are taking to produce those forces needed for our country's safety via the All-Volunteer Forces than to introduce anything approaching amnesty a full unconditional amnesty or a conditional one. As the chairman full well knows, 4 or 5 years ago we had 3.6 million men under arms. Today it is about 2.1 million on Active duty. We are making every effort—I am speaking now, of course, of the country—to strengthen the Reserve Forces, the six Reserve components. I could not think of a more hurtful example than "amnesty" for both the Active duty and the Reserve Forces today in this new environment, an All-Volunteer Force—which, incidentally, is not used by our putative opponents, the Soviet Union or the People's Republic of China, they have near universal compulsory military service.

The quality of compassion has been invoked from time to time by those who favor amnesty. Compassion is a very admirable attribute. As a matter of fact, our view that the United States of America, viewed one way, is a network of compassionate work of one kind of act or another performed by various Veterans of Foreign Wars posts, the length and breath of the land and their ladies' auxiliaries, things that help people directly today. But the real question then is, compassionate toward whom? Toward the people who fought the war no matter what their views might have been, who might have desired a shorter and more purposeful war, or obviously no war at all? A war has not been conceived yet that is not brutalizing or dehumanizing. I have spent 30 years in the Army, and I guess my "war box score" is 1 won, tied 2. And we hear the argument that World War II somehow was a good war and Vietnam was a bad war. No war is good for the Army, the Marine Corps, or combat crews of the Navy or the Air Force.

The redemptive quality of justice and the lack of vindictiveness is sometimes cited as something we should keep in mind on the notion of amnesty. Well, I am going to cite a case that was cited by an earlier witness, and in a rather different context. A young man who spent 5 years in Sweden during the heart of the Vietnam war, 5 years, 1968 to 1973, was found guilty of absence without leave, and has been sentenced to 15 months in the stockade. That, I think, is an incredible sentence in view of the seriousness of his offense. So rather than cite it as something that is horrible as happening to our system of justice, I think that is an example of the kindliness and compassion that many of the young people have every right to expect when they return and face up to their responsibilities as citizens.

In all frankness, I believe that the title of some of the proposed legislation your subcommittee is considering, the "War Resistors' Exoneration Act," displays sort of a cavalier sense of vindictiveness toward Americans who did not seek "full customer choice" of their war. Whatever their personal views were, they went the pro patria route versus self-fulfillment or self-gratification or self-rationalization.

Two distinct bodies of people are involved here, which, I am certain, you recognize, Mr. Chairman, and the other members of your subcommittee. There exists a mechanism for deserters. It is the Uniform Code of Military Justice, as amended, in which the Congress has collaborated over the years. It is not a document dreamed up by some

Dr. Strangelove in the Pentagon or anything like that. It has the full collaboration of this branch of Government as well, of course, as the executive branch.

I have already given an example of how one case under the Uniform Code was resolved, and I thought resolved at an incredibly light level. I see no need for any additional mechanism for deserters. And in terms of numbers involved, once again numbers here are difficult, the numbers I have—and I have no reason to doubt them—indicate that from about the mid-1960's to about a year ago, a little more than 500,000 deserted from all the armed services, and there are about 30,000 out now. Let us say those figures were off by 10 percent. Good Lord, 30,000 deserters is a serious proposition. It is equal to about two divisions. But it is not a "nation" of Americans abroad or a "nation" of Americans underground or anything of that sort.

Now, in terms of those who are draft dodgers, or other titles that have been applied to them here, it is quite clear to me, they broke the law, often with very noble and self-serving statements surrounding that action, and I think it would be in their interest and in the interest of the country to have them face up to American justice which, as I have indicated earlier, evidence of which we are seeing daily from the highest to the lowest works.

I must confess some respect, for those whose opposition to the war in Vietnam, or any earlier war, led them to stand up and be counted and accept a jail sentence. They are accountable citizens of a free country. Those men have my respect. While I obviously disagree with the stand they took, they have my respect.

We are approaching our National Bicentennial, as we all know. In the nine wars that have marked our country's progress, in one melancholy way from the Revolution through Vietnam, we have seen 667,000 dead Americans, and whatever else one may say or think about war—and as I have indicated earlier, the good war has not been conceived yet—these brave Americans made all else possible. I think amnesty would be a studied insult to those that are living today and those that went before.

I would further suggest that I find it very difficult to accept the notion, cherished by some, that draft dodgers somehow are the moral vessels of the industrial west, to whom like gurus we should report for moral uplift when they return to our shores. They are, in fact, lawbreakers, as I have said earlier. I am not accusing them of being cowards. They may be in some cases, I do not know. Assessment of motivation is most difficult. But no matter what they thought, or no matter what the people who stood and fought in their place thought, they broke the law.

I can assure you, sir, and other members of your subcommittee, that Vietnam was not a popular war for those of us called upon to do our country's bidding. It was in fact—as we have said in the Veterans of Foreign Wars, it may or may not have been a rich man's war, but it was a poor boy's fight. Some soldiers in my unit were illiterate in two languages: English and Spanish. And I think it was a disgrace that the United States of America sent over to fight in its infantry—and I mean here Army and Marine Corps—people who had such a small stake in our country.

So Vietnam was not a popular war one iota. But that is something apart. We are talking now about people who, however they rationalize, sought their way out of it.

I suspect, in all frankness, that amnesty is sort of an artificial issue. I detected no great ground swells either for it or against it in my travel around the country. There are articulate groups that keep it alive. I suspect, however, that there is quite a bit of "bicycle pump" work on amnesty as opposed to the naturalness of a real political issue: $1 for a loaf of bread, $1 for a dozen eggs, and 2 hours in a gas line. Those are things that we can all understand. Those are ubiquitous, and the policies that brought these issues to pass are valid political issues.

I would also suggest to this subcommittee that terrorism, political or personal, is something that, perhaps at some future date, you should, within your own procedures, come to grips with. What happened on the west coast, and what happened in Atlanta and what apparently happened outside Paris is a terrifying new dimension of political "dialog," to say the least.

My final point: I think there are about 7,000 to 10,000 Americans who are draft dodgers, either underground in this country or abroad. There may be more, or there may be somewhat less. As I indicated earlier, these figures here are not "morning report" items from the military. They can only be of an order of magnitude. And these 7,000 to 10,000, need not fear their day in court.

There has been dissent from past wars. In Congressman Drinan's home State there was a powerful dissenter to American participation in World War II. His name was Joe Kennedy. He was Ambassador to the Court of St. James. He did everything he could not to align American power with that of the then British empire and sought to keep America out of World War II. Whatever his views were, or the views of his son, President Jack Kennedy—who wrote, "Why England Slept"—when the time came, the Kennedys went the route for their country.

I have attached also to my statement, Mr. Chairman, an exchange of correspondence between our commander-in-chief, Mr. Ray Soden, in Chicago, Ill., in which Mr. Soden sought to get a reaffirmation from the President of the President's earlier opposition to amnesty. Such a reaffirmation was received, and it is attached to our testimony.

I believe you might have seen in another context the letter that former Secretary of Defense Melvin Laird furnished in connection with that issue. I believe I have seen it in the Congressional Record. And for that reason, I have not attached it to this testimony.

Thank you very much for your courtesy.

[Mr. Jones' statement follows:]

STATEMENT OF COL. PHELPS JONES, UNITED STATES ARMY (RETIRED), DIRECTOR, NATIONAL SECURITY AND FOREIGN AFFAIRS, VETERANS OF FOREIGN WARS OF THE UNITED STATES, MARCH 8, 1974

Mr. Chairman, on behalf of more than 1.8 million of our fellow Americans enrolled in the Veterans of Foreign Wars of the United States, I am pleased to appear here representing the National Commander-in-Chief, Mr. Ray R. Soden, Chicago, Illinois, in response to your written invitation. The V.F.W. is appreciative of this opportunity to present our views on the subject of "amnesty."

I have attached to my prepared remarks Resolution Number 459, "Oppose Amnesty," adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

The operative paragraph of our mandated position from this resolution follow:

"BE IT RESOLVED, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that (1) we go on record opposing unequivocally both general and selective amnesty for draft dodgers and military deserters; and, (2) that they should be required to stand trial for their crimes and shall pay such penalties upon conviction as the laws prescribe; and

"BE IT FURTHER RESOLVED, that the Veterans of Foreign Wars of the United States be totally committed to pursue the 'no amnesty doctrine' through its membership, the Congress of the U.S., and the American people and to be firm in our stand not to relinquish, dilute or compromise this position."

Obviously, there is no question of where we stood yesterday, where we stand today, and where we will stand tomorrow.

We totally and unapologetically oppose general or selective "amnesty" for draft dodgers or deserters and we will never, as our resolution indicates, "relinquish, dilute or compromise this position."

I know these are strong words, but we believe any departure from this clear cut position would be a tragic and pointless breach of faith, not only with 29 million veterans and their families, but with the great majority of Americans of all political persuasions and from all sections of this country.

In furtherance of the foregoing position, I will now (a) provide a short history of "amnesty" in America; and then, (b) summarize the reasons for the V.F.W.'s "no amnesty" doctrine.

A SHORT HISTORY OF "AMNESTY"

While there have been thirty-four separate incidents of "amnesty" in U.S. history, dating back to George Washington's 1795 pardon of those participants in the Whiskey Rebellion who agreed to obey the law, *there has never been an unconditional "amnesty" of draft dodgers following any war. There was no "amnesty" after Korea.*

KOREA

President Truman's 1952 Christmas "amnesty" dealt only with *peacetime deserters*—men who had left their units between V–J Day and the outbreak of Korean hostilities, June 25, 1950.

WORLD WAR II

After World War II, 28 months after V–J Day, President Truman provided pardons for some 1,523 out of 15,803 draft law violators whose cases had been taken up, with case-by-case recommendations, by a review mechanism. That was one out of ten.

WORLD WAR I

Post World War I, in 1924, President Coolidge provided "amnesty" for 100 deserters—but all 100 had deserted their units *after* the November 11, 1918 armistice. They were peacetime deserters.

In 1933, President Roosevelt—15 years after the World War I Armistice—granted "amnesty" to 1,500 individuals convicted of espionage act and draft law violations during World War I, *who had completed their sentences.*

CIVIL WAR

The Civil War "amnesties" are those most cited by proponents of Vietnam "amnesty." However, the comparisons are inexact. First, they never dealt with draft dodgers. Secondly, all of President Lincoln's and President Johnson's "amnesties" dealt with (a) Confederates or (b) deserters from the Union Army—and none of them was unconditional.

To the Confederates, with exceptions, President Lincoln in 1863 offered pardons if they took an oath of loyalty to the Union. His purpose was clearly to deplete Confederate ranks, or to ease the burdens on the Union. To Union military deserters, in 1865 President Lincoln offered full pardons, contingent upon their return to their units, within 60 days, to serve out a period of time equal to their original period of enlistment. Punishment set by Congress for not returning within 60 days was permanent forfeiture of rights of citizenship.

The principal occasion on which President Lincoln's government dealt with draft resisters was in the City of New York, where many rioted in March of 1863, and Mr. Lincoln's Federals put down the riots with between 500 and 1,000 dead.

Shortly after taking office, in May, 1865, President Andrew Johnson granted full pardon to all *Confederates* (with exceptions) who took the unqualified oath of allegiance. Similar proclamations were issued in 1867 and 1868—leaving few Confederates ineligible.

In July, 1866, more than a year after the war's end, President Johnson allowed deserters to return to military duty, without punishment, but with forfeiture of pay.

Post-Civil War, there was *never* a general unconditional "amnesty" for either draft dodgers or deserters; and, indeed, not until 1898 did the Universal Amnesty Act remove all disabilities against all former Confederates.

CONCLUSION

What those who have fled the country and their unfeeling supporters now seek is not "amnesty" or forgiveness. They seek vindication, approval by the United States Government, that they were right and America was wrong. To grant what these few thousand deserters demand would be to dishonor those millions who served their country with honor, *whatever their views might have been about our no-win war policy in Vietnam.*

SUMMARY OF V.F.W. OPPOSITION TO "AMNESTY"

TRADITION

There has never, following any American war, been a general "amnesty" for draft dodgers.

NATIONAL UNITY

A majority of Americans strongly oppose unconditional "amnesty" for draft dodgers or deserters. The country would be divided, not united, by such a policy.

JUSTICE

For every individual who deserted, hundreds served; some of the latter paid with their lives. Is it fair to the dead, fair to the thousands in hospitals, fair to the families of wounded, missing and lost that, when the war is over, the runaways come home either scot-free or with an easy alternative to combat service?

RULE OF LAW

If some are allowed to place their own views above the laws of the United States, with impunity, the rule of law itself is undermined.

NATIONAL SECURITY

Exoneration of draft dodgers and deserters would set a precedent that might convince young men, in future emergencies, that they risk little or nothing in ducking their country's call to war service. The impact would be dramatic and adverse upon the men in both the active service or reserve components who either volunteered or answered the call to duty.

Now, the quality of "compassion" or "redemptive justice" is invoked by those who favor "amnesty" or some soft alternative to wartime service. Now compassion is a fine attribute. As a practical matter, America is one great network of compassionate community services undertaken by V.F.W. Posts and their Ladies' Auxiliaries. But, Mr. Chairman, and this is the crucial "but," a misdirected sense of compassion for those who are openly contemptuous of our country and its most cherished values is not an act of compassion. It would be idiocy.

I shall now refer to some correspondence initiated by our Commander-in-Chief, Ray R. Soden, with the President on this subject—a copy of this correspondence is also attached to this statement.

Mr. Nixon re-iterated in the clearest possible way his view that, ". . . Those who served paid their price. Those who deserted (or refused to serve) must pay their price. And the price is a criminal penalty for disobeying the laws of the United States."

We agree totally with President Nixon's position. We must reject, totally, views apparently held by some Members of the 93rd Congress which call for either general amnesty, conditional amnesty, or some soft peacetime national service in lieu of hazardous war time exposure.

For deserters, there is the Uniform Code of Military Justice, as amended. Perhaps in some cases of desertion there could be matters in mitigation and extenuation which could be brought forward. But, a mechanism now exists for deserters. No legislation appears needed here.

For draft dodgers, their sole recourse is to face American justice for their criminal action against the community. No American should ask for preferential justice ("amnesty"), none need accept less than his day in court.

Mr. Chairman, a final word.

In 1976, our beloved country will be celebrating its bi-centennial. Since our revolutionary beginnings, 667,000 American fighting men have laid down their lives in nine wars from Bunker Hill to Vietnam. This outpouring of devotion is the rock on which our country has survived and flourished. These brave Americans made all else possible. To extend preferential justice to those who placed themselves outside this tradition of selfless patriotism would strike at the very heart of what the bi-centennial celebration is all about.

I urge you and your colleagues in the Congress to reject any effort from any quarter to bend justice to fit draft dodgers and deserters. We are a better nation for not having them in our midst.

Thank you.

Mr. KASTENMEIER. Thank you, Colonel Jones.

Without objection, Resolution No. 459 adopted at the National Convention of the VFW last August, a letter from Commander in Chief Ray Soden to the President dated January 7 of this year, and the President's reply dated January 23, 1974, to Commander in Chief Soden signed by Richard Nixon, will be accepted as a part of the record.

[The resolution and letters referred to follow:]

RESOLUTION NO. 459

OPPOSE AMNESTY

Whereas, in crucial times, millions of American citizens have been called upon and have honorably served to defend our country and to protect our cherished freedoms; and

Whereas, in doing so, many were killed, wounded, incarcerated in enemy prison camps, missing in action and many returned home to rebuild a life of peace and opportunity for themselves, and their families and took their rightful place in the land for which they fought; and

Whereas, while these great men served with honor, others who also had been called upon to serve sought not to accept their responsibilities but abandoned their country by fleeing outside its borders; and

Whereas, others while serving in the military chose to desert rather than discharge their sworn obligations; and

Whereas, to grant amnesty to those draft dodgers and deserters who violated civil and military laws without penalty, would be a gross injustice to our judicial system, to the sacrifices made by those who served and are still serving, their families, POWs-MIAs and to the United States of America; and

Whereas, we fully and completely agree with President Nixon when he stated that "men who dodged the draft and sought asylum in other lands while the Vietnam war was in progress and now wish to return to the U.S. must pay the price and no amnesty will be afforded them"; Now, therefore, be it

Resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, That (1) we go on record opposing unequivocally both general and selective amnesty for draft dodgers and military deserters; and (2) that they should be required to stand trial for their crimes and shall pay such penalties upon conviction as the laws prescribe; and be it further

Resolved, That the Veterans of Foreign Wars of the United States be totally committed to pursue the "no amnesty doctrine" through its membership, the Congress of the U.S., and the American people and to be firm in our stand not to relinquish, dilute or compromise this position.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Washington, D.C., January 7, 1974.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As you will recall, my predecessors and I have constantly reaffirmed to you the total and unremitting opposition to any form of "amnesty" held by the Veterans of Foreign Wars and our Ladies' Auxiliary.

We have, over the years, been heartened and strengthened in our resolve by repeated expressions from you of your clearcut and unequivocal opposition to this unworthy and divisive action.

It is with shock and a deep sense of betrayal, therefore, that I noted a news story which sets forth, in some detail, the development of a "conditional amnesty plan" developed by Mr. Laird while he was serving as Secretary of Defense.

Mr. President, as you well know from your numerous meetings with us, the V.F.W. says what it means and means what it says.

I find the actions and apparent sentiments of Mr. Laird and the former Army Secretary, Mr. Froehlke, on this matter of "conditional amnesty" to be unconscionable and, by their covert means of proceeding, to constitute a breach of faith both with you and with the strong men and women who served, suffered, and, in 57,000 cases, died.

I respectfully request a personal reaffirmation from you on this matter of "amnesty" which may well become an issue of wide Congressional concern.

Our view is unchanged and unchangeable: due process of the law for all; preferential justice for none.

Most respectfully,

/S/ RAY R. SODEN,
Commander-in-Chief.

THE WHITE HOUSE,
Washington, D.C., January 23, 1974.

Mr. RAY R. SODEN,
Commander-in-Chief, Veterans of Foreign Wars of the United States, Washington, D.C.

DEAR COMMANDER SODEN: I have received your letter of January 7 expressing the Veterans of Foreign Wars' stand against the granting of amnesty to offenders of the Vietnam era.

As you know, I have previously stated my views on this matter, and I would like to take this opportunity to reaffirm my position. In the course of a White House press conference in early 1973, I said that millions of Americans chose to serve their country in Vietnam and that many gave their lives for their choice. The few who refused to serve, or deserted their country, must pay a penalty for their choice . . . We cannot provide foregiveness for them. Those who served paid their price. Those who deserted must pay their price. And the price is a criminal penalty for disobeying the laws of the United States. That still reflects my views on the subject, and you may be assured that there is no reason to experience now a sense of betrayal as a result of recent reports in the press which have been attributed to others.

Further, I concur with your position that the cases of all Vietnam era offenders should be disposed of in accordance with due process of law and it is my hope that this procedure will be followed by all concerned.

On a completely different subject, I wanted to take this opportunity to thank you for your birthday greetings. Your thoughtfulness helped to make the occasion an especially enjoyable day.

With my best wishes,

Sincerely,

RICHARD NIXON.

Mr. JONES. Thank you, Mr. Chairman.

Mr. KASTENMEIER. At this time I will yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you very much.

Do I understand that you recommend that the 30,000 deserters, roughly, turn themselves in, and they will get what you consider an incredibly light sentence of 15 months in jail.

Mr. JONES. I gave the example of the Fort Carson case as certainly illustrative of the type sentences that could be meted out to some of those deserters. Quite obviously I have no pattern of punishment.

Mr. DRINAN. He will still get out after jail with an undesirable discharge, or worse sometimes?

Mr. JONES. Under current regulations that is true, and in our view, deservedly so.

Mr. DRINAN. Do you really think that is realistic to suggest that? You are saying that there is no problem whatsoever, and you have assaulted the integrity and sincerity of the people at least five or six times, according to the notion you took.

Mr. JONES. They have assaulted my commonsense and patriotism by indirection on an equal number of occasions, Congressman.

Mr. DRINAN. You suggested that it is some small group that keeps this issue alive.

What about all the churches and synagogues of America that have a profound interest in this? They spoke here this morning, and unanimously they say that something should be done, and that that war tore people apart and tore this Nation apart, and that the Nation is now faced with the fact that they were all supposed to merely follow orders without question. We are supposed to have law and procedures that allow people to follow their conscience when their conscience deviates from what the Nation requires, are we not?

Are you suggesting that they are all a part of this underground clique, as you practically said?

Mr. JONES. No. 1, I didn't say underground clique. And No. 2, my perception is that the leadership of churches may be more committed in this regard perhaps than the great bulk of their followers.

Mr. DRINAN. That is no answer at all. Are they wrong? Are the churches all wrong? Are all the moral and religious leaders of this country 100 percent wrong on this issue; is that what you are telling me?

Mr. JONES. Of course not.

Mr. DRINAN. You will have to say that if you are consistent, that they are totally wrong 100 percent.

Mr. JONES. I have to die, and I have to pay taxes as a free American. I don't have to say what you put in my mouth.

Mr. DRINAN. You don't have to. You have to be logical.

Mr. JONES. I will try once again, Congressman.

In my travels around the country—and I do this periodically, I talk to groups within our organization and out, I seek out groups with every shade of opinion that I can possibly reach—amnesty does not surface naturally and normally as a conversation, Watergate does, the energy crunch or crisis does, and the price of eggs does, what is going to happen in the Middle East does, but amnesty as an issue just does not come through to me. I am not accusing, obviously, our church leaders of anything except——

Mr. DRINAN. That is totally irrelevant. We deal with a lot of issues on this subcommittee that no one cares about, like prison reform and copyrights and patents and no one says that is a big great national controversy. This is an issue that affects thousands or hundreds of

thousands of individuals and their families, and I think it is just erroneous of you to say that it is not an issue. Obviously this is an issue upon which 300 or 400 individuals and groups wanted to testify, and upon which we were able to arrange to have hearings.

Are you suggesting that we shouldn't even have laws for CO's? You praise those CO's, and that surprised me a bit. But you say this is an artificial issue. What do you mean an artificial issue?

Mr. JONES. Artificial in this sense. Certainly there is a problem There are *x* number—who have either gone underground in this country or aboad, *x* number. And certainly they should be dealt with under a system, our system of justice.

My position is, every American can expect his fair day in court, and should expect nothing more—or settle for anything less, by the way.

Mr. DRINAN. What is an artificial issue?

Mr. JONES. Well, it is the notion of putting a fence around this group and saying, this is a special band of people we should look at especially. Now, there are all sorts of people who break all sorts of laws who don't quite get this kind of treatment.

Mr. DRINAN. Because they don't do it in the name of conscience, and they don't say that this Government is wrong, and if they are hoods or bank robbers or crooks in the White House then they get the treatment that is, of course, given out to them. This is a certain group, and we certainly have to give them special treatment, that is what it is all about. Yet you say this is an artificial issue. You just say that we all blindly follow the Government, is that your position?

Mr. JONES. Congressman, as to whether an American should docilely follow the Government, the answer is not at all. This is a democracy, and every view point obviously should be brought up. I am simply saying that the notion of amnesty has certainly received at least its fair share of national attention and exposure in terms of its intrinsic importance. That is judgmental, of course.

Mr. DRINAN. Do you think that the Congress can make some law or some disposition, and that we have concurrent jurisdiction with the——

Mr. JONES. Quite clearly the Congress, or some element of the Congress, feel that there is a need for hearings, or they would not be held. I am simply suggesting to you, sir, that in view of the track record, if you will pardon that phrase, of American justice, to this date, right through all the difficulty here in town we know about, I think American justice is doing pretty fine. And the notion of an immunity review board, that is a sort of a stacked deck situation. And the whole notion that these people are, if you will, our moral superiors, I find, in all frankness, gagging. I don't think they need to be treated separately at all. I would like to see individual accountability.

Mr. DRINAN. Would you oppose the Truman Amnesty Review Board?

Mr. JONES. One, I don't think I was sufficiently politically conscious at that time to even know what was going on.

Mr. DRINAN. I mean setting that up now.

Mr. JONES. I would think in the first instance the U.S. district attorneys, wherever they may be across the land, should be the first individuals to whom the draft dodgers should report, and then as a court of appeal, if you will, this case-by-case mechanism of the type Mr. O'Neil alluded to somewhat earlier.

Mr. DRINAN. Do you think that President Nixon should follow President Truman's example there?

Mr. JONES. In my judgment, if we find we have a real problem in terms of numbers, yes; I think I do.

One additional point on numbers. It occurs to me that if we have large populations in Toronto, Montreal, Quebec, Vancouver, Stockholm, et cetera, we would be getting some kind of word from those governments about this large population of displaced Americans in their midst. I am not aware of any large scale foreign protests publicity on that situation.

Mr. DRINAN. They are not likely to write to you, but there is a monthly magazine with all types of literature about the whole problem. Even if there were only one individual it seems to me that we shouldn't say it is not a problem, because it only involves one American. If he feels and other people feel that he has been denied justice, it seems to me that this committee and the Congress has to take action to do justice to only one person.

Are you suggesting that it is not important because there are only 20,000 or 25,000 people?

Mr. JONES. I am suggesting that I trust the justice system of this country and——

Mr. DRINAN. Except that it didn't work when President Truman set up the Board. If it doesn't work, then the President should set up a board to review complaints down the line.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. I just want to thank you for coming here and making this statement on behalf of the Veterans of Foreign Wars. And I don't have any questions.

Mr. KASTENMEIER. Thank you.

I have only one comment. I have heard some criticism to the extent that we are holding hearings on this issue. I observed that the Veterans of Foreign Wars thought it was enough of an issue to take it up at its national convention and pass a resolution on it, as did the American Legion. Therefore clearly your organization thinks it is an issue. However, you may differ with other groups here.

Mr. JONES. I admit the inconsistency. That as a point is well taken. I am simply saying, yes; it is an issue. I do believe it is receiving some artificial stimulus. But that is judgmental. The Veterans of Foreign Wars resolution is entitled "Oppose Amnesty" which clearly implies the issue originated elsewhere.

Mr. KASTENMEIER. Thank you, Colonel.

Mr. JONES. Thank you very much, Mr. Chairman, Father, Congressman.

Mr. KASTENMEIER. Next the Chair would like to call witnesses representing the Clergy and Laity Concerned. They will be introduced by Trudi Young, who is the program director for the organization.

I remind you that the testimony of your witnesses is limited to 15 minutes, please, because of the number of witnesses yet to be heard. I hope that you will all be concise.

You may proceed.

TESTIMONY OF TRUDI YOUNG, NATIONAL COORDINATOR, CLERGY AND LAITY CONCERNED; ACCOMPANIED BY JAMES CREDLE AND WAYNE SPENCER

Ms. YOUNG. I appreciate the time and the fact that we come at the end of a very long day, and under the glare of the hot lights. So I will cut my testimony, which I hope will be included in the record, along with the testimony of those accompanying me.

Mr. KASTENMEIER. Without objection, it is so ordered.

[The statement of Ms. Young follows:]

TESTIMONY FOR CLERGY AND LAITY CONCERNED, PRESENTED BY TRUDI SCHUTZ YOUNG, JAMES CREDLE, AND WAYNE SPENCER

I am Trudi Schutz Young, Program Director of Clergy and Laity Concerned (CALC). We are a nationwide network of persons working within the religious community. The organization began and grew as a direct response to the United States war in Indochina. From the beginning, participants in CALC included religious people at the national and local (congregational) level. We represent 50 local chapters and a participating membership of over 50,000 persons. We work directly with persons of all faiths—Protestant, Catholic, Jewish—both through institutional religious structures and at the personal level, trying to express our religious heritage and traditions through community work and life.

During the "hot-war years" of the Indochina conflict, CALC developed its ministry in a variety of ways. All over the country there were special church services decrying the moral and political horror of the war; ministers, priests, and rabbis spoke out—from their pulpits and at national demonstrations—about Americans' responsibility to work for an end to the war. Throughout the country, often in church or synagogue buildings, we helped to develop a network of draft and military counselling, to aid those in need of help as they confronted the draft and the war. We provided a ministry (financial and personal) to many of the early exiles and deserters in Canada and other countries. We worked with many of the other religious and peace groups to build the massive demonstrations and mobilizations, in Washington, DC, against the Vietnam atrocity.

Continuing our work, we now see our goal in terms of understanding and confronting America's use and misuse of power. To further this goal we engage in programs focusing on the continuing war in Southeast Asia, the need for a full amnesty, the role of corporations in US foreign policy. We publish a bi-weekly newspaper, *American Report* and continue the development of our grassroots field program. We see each of these projects as a handle, an approach, to the American power systems we seek to transform. Together, our programs connect in a strategy for the religious community that enables us to understand our relationship (as religious persons and institutions) to the problems we wish to help solve and, as we tackle them, begin to right some of the particular wrongs in our society.

There is, for example, no universal and unconditional amnesty for those who resisted the war in Indochina. US aid continues to the Thieu regime, perpetuating and undergirding his military and a prison system which holds several thousand civilian prisoners, in violation of the 1973 Paris Peace Agreements.

Since CALC came into being in response to the war in Indochina, it was an obvious "next step" for our organization to begin working toward an amnesty for those persons who resisted that war. We began to talk, nationally and locally, about the dimensions of our work on this issue. In doing so we began to recognize some of the lessons we had learned as a result of our Vietnam work. Initially, our response to the Indochina war was primarily one of moral outrage: we saw it as a violation of our human and religious beliefs about brotherhood and personal dignity, about the rights of persons to live and choose their own personal and political constructs. We believe that our American government had no place in the civil difficulties of the Vietnamese (the people of Indochina in general) and understand that our government's intention was not, as it pro-

claimed, to "free the Vietnamese" from the exaggerated dangers of communism or to perpetuate ideals of democracy, but rather to entrench and develop our economic and political interests in Southeast Asia. The final result of this policy is perhaps best summarized by the US military officer who looked at a village destroyed by American fire-power and said: "We had to destroy this village to save it."

To understand this reality about America's involvement in Indochina brought many of us to a place where we had to deal with this unprecedented war in our country's history as but one of the more horrendous and public examples of America's foreign and domestic policies and priorities. Seeing this, we began to confront the relationships between the military, industry, and the government: we understood that it is in the combined interest of these institutions to perpetuate (less publicly, now, since there has been a great outcry in our nation against the Vietnam war) a policy of Indochina-like wars.

Such an "Indochina-wars" policy is not unconnected with many of our domestic problems. Most simply, the tax dollars that are poured into the use of American power abroad are monies that are not being spent to deal with much of what is sick and unbalanced in our society at home. But at a much deeper level, there is a link between what America stands for abroad and what it is at home.

You as legislators and we as American citizens have long been trying to understand and deal with the race and class tensions and inequalities which exist in this country. I would say to you that it is *because* these race and economic tensions and inequalities exist that American can continue the foreign policy manifested in the last three administrations.

I worked for several years as a draft and military counselor with the Central Committee for Conscientious Objectors in Philadelphia. In my work there it became overwhelmingly clear to me, through the cases that came across my desk, that it was the people of color and lower economic class who are America's prime victims of the war in Indochina. They are victims on several levels. First, unlike white people of the upper and middle classes, they don't have the advantage of education and environment which would have enabled them to know about or articulate the qualifications for alternatives and deferments from Vietnam service. It was basically the white and advantaged people who saw choices in relation to the war and the people of color and lower class who were shown once again the limitation of choices, due to their situation. For these people the military represented a chance for mobility, education, and development. The military claims to offer training, pay and benefits. Structured into a society where jobs and mobility exist primarily for the "haves" rather than for the "have-nots," the military represented an important, viable option.

For the disadvantaged, principles of "conscience" and "sincerity" (criteria testing those who applied for conscientious objector status) meant such basics as how can I live my life in the best way possible; how can I be with and support my family; how can I achieve human dignity. And yes, saying something like this on a CO form would probably have enabled many of these persons to obtain a deferment and, thus, continue to work on their community's issues. However, we all know of the discrepancies in the way selective service boards operated and about the various interpretations of selective service regulations around the country. We also know how unevenly spread was the information about qualifying for CO classification. Many young men (indeed, many members of the draft boards with which I had occasion to deal) believed that conscientious objector meant either "Quaker" or "Mennonite." Knowing the real legal options within the selective service system was a privilege and a luxury available to a very small number of persons.

Thus, if one puts together the unavailability of adequate information and counselling about alternatives for the majority of young Americans facing the draft, and the perceived benefits that an already-disadvantaged person in the society connected with military service, it is very clear why many people enlisted in the armed forces or accepted the call to be drafted.

Once in the military, some people did indeed come to a point where whatever benefits they received could no longer be justified in juxtaposition to their killing and, potentially, being killed, in a war that had no meaning for their lives back home. Their dissatisfaction and lack of belief in the cause for which they were asked to fight was coupled, for many, with growing frustrations with the rigidity and inhumanity of the military structures in which they were serving. Thus, there was an incredibly high desertion rate and a high degree of

petty offenses and misdemeanors which were the soldiers' response to an intolerable situation.

When CALC came to talk about and deal with the issues of Amnesty, our memory of draft and military counselling was vivid. And we had to see that "resistance" to the war was a much broader and more complex issue than only the forms of resistance of those (basically white and middle class) persons who had the options, the education, and the knowledge of choice which led them to decide on Canada, prison, or CO . . . or, even college.

And since our definition of "conscientious" had been broadened by our growing understanding of the context in which different people from various classes responded to the war, a context which developed out of life-situations which very much affected the ways in which they could or could not say no to killing and being killed—we could not leave this understanding behind when we spelled out the meanings of amnesty. We had to understand that "conscience" is not tested by a person's use of our, basically white and middle class "church" language and action-response. We had to know that people come from different places, and act accordingly.

For all of us amnesty means some form of reconciliation. Indeed, our society is badly riven. We are a divided society economically and racially, as I have already pointed out. We are further divided by an American people who have grown to hate the war in Indochina and, at the same time, desperately want to find some kind of honor in the country where we live. We are also divided because of the internal results of the war here, in America. People who fought in the war, the veterans, are unable to get jobs because of bad papers; they are unable to receive many of the veterans' benefits such as medical treatment, education, housing, and legal assistance. They who fought the war bear an ongoing stigma as a result of fighting in that war.

We all, I think, have a duty to restore more unity to this country of ours. The civic duties taught by both Judaism and Christianity are simple. We are to carry the good tidings to all who are afflicted, to bind up and comfort the broken-hearted and all who mourn, and bring recovery of sight to the blind. We are told to proclaim release and liberty to the captives, to open the prisons of those who are bound and oppressed. These duties, I would insist, are the very essence and core of the social contract under which we live. And they command us, regardless of who or which party occupies power. And it's these duties, which, if we fulfill them, lead us to proclaim the need for a universal and unconditional amnesty as the only justice that could exist within this country for those who resisted the war in Indochina.

But in seeking either justice or reconciliation, or both, if we can, we cannot make meaningless the acts that have produced the problem: the acts of government and the acts of resistance. That is to say, we must face the fact that the government commanded and men disobeyed. And this occured at the ultimate level—where government commands men to kill and be killed unjustly. And I think we, in our time, are being asked by history to say what are the limits to such commands.

As a national state we have become a great killer. We are killers abroad, with our Indochina-wars policy; and we are killers at home in terms of the social stratification which enforces our ability to make such wars. There must come a day when this conceit ends. Or there will come the day when humanity ends.

Amnesty would be a life-affirming measure of not only reconciliation but also a movement toward the kind of justice and equality which this society so desperately needs. It would signify a reversal of the now obsolete prerogatives of the state to intervene in young peoples' lives, and to dominate them for its own purposes.

Is the guilt for the war in Vietnam common to all of us? There are many arguments against the idea of universal guilt. Knowing them, I still must say that for this war we are all to blame. All of us, that is, except precisely those who bear the punishment for it: the young, the poor, and the non-white. And it was from the ranks of this group of people that there came the men and women who said "no," who went to prison, into exile, dropped out of sight, made their separate peace by desertion or resistance within the military. They withdraw from the killing; and by so doing they added a fraction to the survival of life—and by so doing they subtracted a fraction from the state's freedom to destroy and kill at its will.

And this is true, *regardless* of their motivation. Let us not lay once more on young men's lives the dead hands of bureaucracy, this time, probing, according

to its norms, for their conscience. What an awful pretense and presumption, as it has always been, that the state can determine what is and what is not a conscientious act. I can think of hardly any worse outcome of the amnesty question than the imposition of tests of conscience and motivation, administered as they would have to be, by bureaucracy. We are all to blame for this war. And, therefore, who is qualified to judge? Let the men who were court-martialed and administratively discharged with less than honorable discharge ratings be given freedom and clean records. Their lives have been mangled badly enough already by state policies that were none of their doing and that were, themselves, on the thin edge of legality, if even that.

Our local chapters around the country and the people in churches and synagogues who relate to us more broadly, are all grappling with what we have learned, what we know, and what we can begin to do to change some of the wrongs and divisions among us as a society. We must find out who in our communities are the men and women affected by the Vietnam era. We must find out the kinds of disabilities they have and continue to suffer. In addition we must work to educate both ourselves and the broader American public about the broader message inherent in the word amnesty: a message which speaks of racism and classism and division, and a message which compels us to deal with those issues. Thus, amnesty, when it is granted, will be one step toward the healing and reconciliation the country so sorely needs.

I am enclosing as part of our written testimony, two documents. One is a report from Minnesota CALC, who have done a statistical study of Minnesotans who need amnesty. As a result of their study, Minnesota CALC has discovered that there are 11,895 persons who will benefit from a universal and unconditional amnesty in that state alone.

Secondly, I am introducing "Backgrounds: Other Than Honorable Discharges—Problems and Prospects for Change." This document was released by the Vietnam Era Veterans National Resource Project and the National Council of Churches. It is not a comprehensive study but does provide a general outline and sketch of the situation.

I must close with one final comment. I find it a source of both anger and considerable sadness that among those you have asked to testify before you, in your quest for a way to deal with the issue of amnesty, there is almost no one (if indeed there is anyone) who represents the people of whom we speak when we talk about amnesty. If anything I have said in my presentation is to be taken seriously, if we are to work seriously, then our seriousness needs to extend to a hearing of those people who are directly affected by the question of amnesty. It is for this reason that when your committee asked me to testify, I explained that I could only testify if I were able to bring with me, to present the burden of the testimony, persons who are potential recipients of a full amnesty. The testimonies of two of these persons follow mine, as part of the Clergy and Laity Concerned statement.

Minnesotans Who Need Amnesty

Since the beginning of our Minnesotans for Amnesty Campaign in June of 1973 we have had many requests for statistics on the number of Minnesotans who would be affected by a universal, unconditional amnesty. In response to this a Research Team has worked for the past four months obtaining accurate statistics where possible and estimating Minnesotal figures from total U.S. figures where state category breakdowns were unavailable. The following report is the result of that research.

Selective Service Violations (Draft Resisters) [1]

Research methods

1968–1969 figures were obtained from the records of Minnesota Draft and Military Help.

Sept. 1970–Sept. 1971 figures were obtained from the card files of the U.S. Clerk of Court offices in St. Paul, Minneapolis, Duluth (the three federal courts in Minnesota). Names of resisters for this period had previously been obtained from the U.S. Attorneys' office by Minnesota Draft and Military Help.

---

[1] People wishing statistics on draft resisters in their area can get them from the Minnesota Clergy and Laity Office, 122 W. Franklin Ave., Minneapolis 55404 or call us at (612) 871–8033. Please include the number of the judicial division you are in (ask your county courthouse).

Jan.–August 1970, Oct. 1971–1973 figures were obtained from the books of docket sheets in the U.S. Clerk of Court offices in St. Paul, Minneapolis, Duluth. (These sheets are summaries of each federal grand jury indictment.)

Results

Total federal indictments 1968–1973: 673.[2]—Dismissals, 344; Acquittals, 69; Convictions, 212; Unconcluded, 48.

CIVILIAN PROTESTERS ARRESTED FOR ANTI-WAR ACTIONS

Research method

In this category we gathered information from various people in the Twin Cities community and wrote letters in 12 communities outstate. While we cannot claim 100% accuracy we do believe these figures are very close to the actual numbers.

Results

Total civilian protester arrested from 1968–1973: 280.[2]—War Tax Resisters, 4; Draft Board Actions, 10; Twin City Civil Disobedients, 79; Outstate Civil Disobedients, 181; Marshall, 166; St. Johns University/St. Cloud, 21.

MILITARY DESERTERS

RESEARCH METHOD

Representative Donald Fraser inquired at the Department of Defense and the Veterans Administration and was told that information on deserters from the military was not available by state.

The U.S. figure here is from the Department of Defense. According to *The Almanac of American Politics*, 1974 Minnesota is 1.88% of the total U.S. population. The following statistics are based on these figures.

RESULTS

U.S. total military deserters, 32,000.

Total Minnesota military deserters, 602.[2]

LESS THAN HONORABLE DISCHARGES

RESEARCH METHOD

Representative Donald Fraser inquired at the Department of Defense and was told that information on less than honorable discharges from the military was not available by state.

The U.S. figure is from the Department of Defense. Minnesota statistic is figured as above.

RESULTS

U.S. total less than honorable discharges, 450,000.

Total Minnesota less than honorable discharges, 8,460.[2]

NONREGISTRANTS

RESEARCH METHOD

U.S. Department of Statistics estimates that 2 million men turn eighteen every year. In a telephone interview in Jan. 1974 Col. Knight, head of Selective Service in Minnesota reported that at least 1% of Minnesota men turning eighteen each year didn't register with Selective Service. The following statistics reflect these figures.

RESULTS

U.S. male population turned eighteen 1968–1973—10 million

Minnesota male population turned eighteen 1968–1973—188,000

Total Minnesota nonregistrants 1968–1973—1,880.[2] (This may be a conservative figure because Byron Pepitone, head of U.S. Selective Service estimated a 10% rate of nonregistration (N.Y. Times, June, 1973)

Ms. YOUNG. I wish to stress that the work that we outline in the testimony and our points on amnesty which we express, and the reasons for it, are to be taken seriously.

[2] Total Minnesotans who will benefit from universal, unconditional amnesty: 11,895.

I think we also need to take seriously those people who are the potential recipients of the kind of amnesty we talk about. I find it a source of some anger and some sadness that very few if any people who are recipients of amnesty are able to be here, either because they can't come back to this country or they are in prison, or because the committee couldn't find them to ask them.

And, therefore, I would like very much for clergy and laity to be represented by two persons who would be recipients of such kind of an amnesty. I would like first to introduce Jim Credle from Newark, N.J.

Mr. CREDLE. My name is James Credle. I am currently the director of the veterans education and training services for the Newark Colleges of Rutgers, located in Newark, N.J. I was drafted into the Army in October of 1965 and honorably discharged in 1967. My involvement and work with veterans began during my first semester at the Rutgers Law School. By the end of the semester, I was convinced that my work in assisting veterans who lived in the Newark metropolitan area was by far more important than my personal goal of completing law school.

However, it was in Vietnam on the daily search-and-destroy missions conducted by my unit, the 196th Light Infantry, where I began to understand that the war was really about supporting an unrepresentative dictator and his regime and not about freeing the Vietnamese people from the clutches of communism.

I began to understand it more clearly when I would talk to the Vietnamese soldiers and they seemed as unclear and as nonunderstanding as I about the reasons why we were fighting. But I saw it more in the faces of the old men and women as they looked at me and the other soldiers with a look of deep hostility and mistrust. You see, as a member of the medical platoon of the Headquarters Company 2/1 Battalion, I participated in what became known as "Med Caps" or visits into villages to offer medical aid to the villagers.

I began to be further troubled within my own head when in the early part of 1967, shortly before I was to return home, I picked up a newspaper while out on a search-and-destroy mission and read a very vivid description of the 1967 riots as they were occurring in Newark. I cannot describe to you how it felt to be dodging bullets in Vietnam while, at the same time reading newspapers and letters from family and friends about the death and destruction caused by riots at home.

At this time I had less than 3 months left before I would be discharged and sent home. My immediate thoughts were: "What? Another war." Later, through the bullets, the bombs, the mortars, the death, the destruction, the picking up bodies of the dead friends and the bandaging of the wounded—my immediate need became to first survive this, then worry about the war at home.

It is the war at home which I am here to speak about today. A war that began within the earliest structure of this country and continues through today. It is important to begin the specifics by describing for informational purposes a general understanding of how the military molds the individual or group in order to fit certain expectations. Then I will describe how this leads to the giving of "less than honorable" discharges to a great many people from the Vietnam era.

However, before doing this I think that it is important to note certain facts relevant to Vietnam veterans who have "honorable discharges."

(1) The GI bill benefits for education are highly inadequate and generally nonexistent in areas such as housing and business loans. As the Vietnam era veterans look around them today they find no gratitude and no respect. They find no jobs and no help. They find that they can't afford education or training. They find themselves wandering aimlessly, searching for the life they had. They are America's albatross.

(2) The present administration attempted to cut back on many benefits that were previously available to disabled veterans, many of whom were maimed or rendered permanently disabled during the Vietnam war. Even the current budget provisions for hospital and outpatient care is extremely insufficient. Although Vietnam era veterans account for nearly 20 percent of the participants in all of America's armed conflicts, they receive only 3.7 percent of the Veterans' Administration's expenditures through June 1972. By comparison, World War II veterans account for 40 percent of all participants, and they have received nearly 50 percent of the Veterans' Administration's expenditures.

(3) President Nixon has stated a desire to aid in obtaining opportunities for veterans; but veterans with whom I work exemplify the generally climbing rate of unemployment—at an alarming rate, for veterans. According to Labor Department statistics for December 1973, of the 4.6 million Vietnam era veterans now between the ages of 20 and 29, a tremendous number are unemployed, with the rate for minority veterans, 20 to 24 years old at 13.2 percent in the third quarter of 1973.

In the early part of my Army career I am reminded that veterans like myself were molded into soldiers through the very real cohesive force of fear combined with humiliation in order to produce obedience. Throughout my training I, like others, was taught all of the "punitive" but few of the "redress of grievances" charges adhered to by the military. We were barraged with "punitive" charges of which we would be convicted if we did not learn not only to obey orders individually but also, we were expected to pressure dissident members of our squad so that they would be obedient.

For example, by not having highly shined boots, one could be given an article 15—a punitive charge—and relieved of a weekend pass. The point is that after serving in Vietnam for a period of time, men learned not to fear those who were giving unrealistic orders. Squad and platoon leaders, recognizing this, saw that their only recourse was to get rid "at any cost" of those who were often described as "troublemakers." Examples of troublemakers to many sergeants or platoon leaders were:

(a) individuals who voiced an opinion and exhibited knowledge of their legal rights;

(b) a small group of minority veterans who would congregate together;

(c) individuals who asked knowledgeable questions during instruction sessions; and

(d) simply anyone who the sergeant or platoon leader did not like for some unstated, yet obvious reason.

I have witnessed a situation where a lower ranking NCO failed to salute a car (which belonged to a commissioned officer) he did not see, but was given an article 15 anyway. Once you became identified as a

troublemaker, for whatever reason, this label followed you wherever you went. Thus, harassment and bullshit details were designated for these people, making their already troubled understanding of what was happening to them during the Vietnam era much more difficult to deal with. This class of veterans is one of the categories of Vietnam era men and women for whom I ask universal and unconditional amnesty.

My simple reasoning is that because the Vietnam war was unpopular; because many of the Vietnam veterans are not the rich, the powerful; and the articulate; because the veterans of this war have been unable to organize on their own behalf (because of being labeled drug addicts, baby killers, and displayed on the front pages of newspapers as criminals, whenever a Vietnam vet commits a crime); because many Vietnam era victims are deserters or draft resisters in exile or underground; because other Vietnam era victims served prison sentences for conscience-sake (refusing to kill and be killed) and, thus, are denied many of their civil and legal rights; because many civilians resisted the war and are serving sentences or facing charges; and because there are still many thousands of nonregistrants and resisters who face indictment and imprisonment under the present legal/judicial system; and, finally, because there are many veterans with other than honorable discharges—so many of our young people's lives have been destroyed or at least altered in such a way that they are destined to spend the rest of their lives in utter discontent and isolation from the rest of the society.

Each of these classes of people resisted in a particular way, because of where in the society they came from and at what point in their lives they became aware of the destruction and manipulation which was the Vietnam war. Each of them was saying "no" in his or her own way. But all of them were saying their "no's" to the same war and war-making systems. A universal and unconditional amnesty would bring about a general, nationwide concern for aid in all forms to all peoples who have suffered from this war.

It is no wonder that statistics indicate that nearly 26 percent of Vietnam era veterans have used drugs since returning from the war. In addition, 30 percent of all male prisoners in State and Federal penitentiaries are Vietnam era veterans. Finally, 560,000 Vietnam era veterans are marked for life by a military discharge system of codes, which defames one's character and are unsubstantiated by fact or trial. For this class of more than half a million veterans, amnesty would have to include simply one discharge category, without a "SPN code," since, in many instances, this coding system prevents employment and denies VA benefits. The high rate of imprisonment and drug usage among Vietnam veterans can be attributed to the fact that few alternatives are granted people who are already without resources.

It is mainly in your hands to extend broad relief and end the suffering for the many young Vietnam-era-affected people.

For some, amnesty will mean higher education possibilities; for some it will mean employment opportunities; for some, housing; for many, amnesty will mean the medical and psychiatric help necessary for themselves and their families, due to the personal impact on lives of the Vietnam syndrome; and for all categories of those affected by the issue of amnesty, it will mean a full restitution of all civil and legal rights and liberties.

At present the alternatives and opportunities listed above (which spell out our meaning of a full and complete amnesty) do not exist for our Vietnam generation. Again: it is up to you, the Congress.

If universal and unconditional amnesty is not granted, the facts show that only those with resources will benefit. Current statistics show that those veterans attempting to upgrade their discharges with legal help, and those who appear before the review board, have a clear advantage in obtaining an upgraded discharge. Since two out of three people with bad papers are lower class and nonwhite, and since these are precisely the people who have neither the money nor the ability to obtain legal help necessary to effective discharge upgrading, it is clear that the present upgrading process manifests the racism and economic prejudice of our society and the military.

In the final analysis, for veterans and others who would benefit from a blanket amnesty, your refusal to act on the amnesty issue will continue to leave them as "wasted people" or "third-class citizens."

For veterans from previous wars, war was hell. And returning home was a time for healing and local and national celebration of unity. For America's Vietnam era victims, war was hell—but many cannot return home; and even for those who are physically home, the hell continues. In an address to the Nation, on March 24, 1973, President Nixon said of the Vietnam era veterans:

> We must demonstrate the gratitude we feel by the actions we take. We must honor them with the respect they have earned and the affection they deserve.

Clearly, neither Mr. Nixon nor the American public are living up to this injunction.

I say to you the price of Vietnam is too high a price to continue paying. The war is not over—America's war is still raging in Vietnam and in our society. And unless full and complete amnesty is granted, the injustices of the Vietnam era will continue to be borne, in this country, by the young and disadvantaged.

Ms. YOUNG. Wayne Spencer from East St. Louis, Ill. will give the next statement.

Mr. SPENCER. First of all I have been listening to this question of amnesty——

Mr. KASTENMEIER. You have a 3-page statement?

Mr. SPENCER. Yes, I have a short statement, concerning what led up to my bad discharge.

Mr. KASTENMEIER. You may proceed, Mr. Spencer.

Mr. SPENCER. First of all, I would like to say, I am from a black minority group. Where I live we are affected by poor income, low income, inadequate housing, inadequate medicare, and undereducated people.

First of all, I think the military should consider the fact that people from these minority areas are not really for military war, especially the Vietnam war. And when this fact is considered, then we can recognize that Vietnam era veterans shouldn't have these undesirable discharges thrown upon them.

At this point I would like to present a brief statement of how I was affected by the Vietnam war, and what led up to my bad discharge.

First of all, my name is Wayne Spencer. I am a 25-year-old Vietnam era veteran living in East St. Louis, Ill. I hold a less-than-honorable (general) discharge. I was raised in a family of five, and I went to grade school and finally finished the 12th grade of high school.

My social-economic class was middle-class poor. I helped support my family along with my brother and my father. My mother did not work. From time to time we were on general assistance aid.

After I graduated from high school, at the age of 18, I enlisted in the U.S. Navy for three reasons:

(1) To avoid being drafted because I did not take to the idea of fighting in Vietnam and perhaps losing my life. I am not a coward, but three of my close friends were killed just before I entered service, and I just could not see any justifiable reason for fighting.

(2) I was to be married soon, and the lady I was going to marry was carrying my son. I thought being in service would help me develop the skills I needed to support my family.

(3) I wanted to get away from home and perhaps find another place in the United States to live.

I really didn't want any part of the military. But after talking it over with my recruiter, my morale was boosted and my hopes were high. The next thing I knew, I had become a tool for the U.S. Government.

My first duty station was horrible. I didn't get the duty station of my choice, like my recruiter had promised me in his bouquet of fantacism. They stationed me in Pearl Harbor, Hawaii, aboard a World War II destroyer which was about ready to fall apart. They gave me a chipping hammer and broom, a paint brush, and a can of paint every day for 6 months. I did not come in the service to become a painter. I wanted to become an electrician. After making a number of determined attempts to pursue my intentions of what I had come in for, I finally came to the conclusion that my recruiter had sold me down the river and that the military wasn't interested in what I wanted but only in what they wanted me to do.

By then I had become discouraged, disillusioned, and had no one to turn to but my loved ones at home. By this time my wife had given birth to my first son. Unfortunately, I couldn't be there when my son was born. This is when I decided I would send for my family to live with me in Hawaii.

But we had come back from a 6-month west Pacific cruise, and I had managed to save enough money to go home first on leave. Sending for my family only presented more problems. I could not support my family on the income I was receiving from the Navy.

My second son was born in Hawaii. Since I had missed my first son's birth, I was determined that I wasn't going to miss this one. So I put in a request to get leave, since my ship was going out on a 10-day cruise. My request was denied, and I missed ship's movement deliberately. My CO had told me that the Navy comes first and my family second. As a result, I suffered a forfeit in pay and 14 days' restriction. I had no choice but to send my family home.

I was told by my superior CO that I could get a change in duty station after 2 years, with hopes of getting stationed closer to home. But instead they transferred me to another ship very much like the one I was on. This, too, was in Pearl Harbor. All this happened after I had consulted a chaplain and told him of my problems.

Things weren't looking up for me at all. My attitude about the military was way below standards. I only wanted out. I began drinking, smoking dope, and dropping pills. I was constantly reporting late for

duty. I wasn't properly counseled, and my problems were steadily getting worse and steadily getting ignored. Later, I was busted with two joints and processed for a general discharge after 3 years and 9 months of service (that was almost my 4 years' enlistment).

Adjusting back into society wasn't easy. I couldn't find a job. (I had "bad papers.") This caused financial problems for my family and later resulted in a divorce. I am separated from my wife, now, and have two children to support.

I am one of the many Vietnam era veterans in America who suffers from a bad discharge. In my opinion, the mistreatment I received in the military is directly connected with the reasons for and the ways in which America conducted its Vietnam war. I was in the Vietnam era military which was not fighting for anything I could believe in and was not in any way seeing or dealing with me and my needs. My response to the Vietnam war and to the military which fought that war is what caused me to get bad papers.

An amnesty that is just (universal and unconditional) must include people like me who were trapped into needing and volunteering for the Vietnam era military for survival and then trapped by what we experienced in the military. An amnesty must also deal with people who are suffering from additional, permanent social prejudice and disadvantage as a result of the bad papers we received.

This concludes my statement.

Mr. KASTENMEIER. Thank you, Mr. Spencer and Mr. Credle, for statements of your own personal involvement in the matters which you feel should be affected by some form of amnesty.

Do either of my colleagues have any questions?

Mr. SMITH. Yes. I would like to ask Mr. Spencer and Mr. Credle, you have talked about the fact that any amnesty that might be adopted ought to also cover people who had a bad discharge or a discharge on less-than-honorable conditions.

Do you approve also, or are you for a general amnesty—you both enlisted in the armed services—did you approve of an amnesty for those who decided that they didn't want to serve in the Armed Forces and took off?

Mr. CREDLE. I will answer for myself. I was drafted into the service. I did not enlist. I approve it, because otherwise basically—I have this written in my statement—the reason why I approve unconditional amnesty to include other than honorable discharges and all people affected by the war is because to do it any other way would just continue what has already gone on in the first place.

I am sure you are aware of the fact that in our judicial proceedings, if you can't get legal aid, if you don't have someone with you, if you don't have the proper kind of resources or the proper types of resources in order to at least be equal to your counterpart, then you are at a disadvantage in terms of appearing, and the chances of your adjudication being worked out favorably are greatly reduced.

And, of course, you always have the issue in terms of black and minority people, the issue of racism always creeps up in any kind of proceeding. If it is not done this way, it is just going to continue what has already gone on in this country. And I don't know how better to deal with it. Once you begin to say, this is bad on this point, and this is bad on this point, you are just dividing the country. And it is sad

when I sit here and listen to so many making that point. It is not just the Vietnam veterans. The young people in this country are still affected. So it is just not 500,000, it is more like 5 to 6 million. People don't seem to realize that, and I can't understand that. Because when you say one person is affected, you are not only dealing with that person, you are dealing with everyone who comes in contact with him.

Mr. SMITH. Did you have an honorable discharge?

Mr. CREDLE. I was honorably discharged from the Army.

Mr. SMITH. And were you not?

Mr. SPENCER. No; I received a General discharge.

Mr. SMITH. Thank you very much.

Mr. KASTENMEIER. Thank you very much for your appearance today.

Mr. CREDLE. May I say something?

There is an important paper on other than honorable discharges which has been released by the Vietnam era veterans national resource project. And I think it is an important document.

Mr. DRINAN. May I just say that I want to thank you and Ms. Young for these extraordinary documents. And it will be very helpful. And I want to thank you for the testimony.

Mr. KASTENMEIER. You are referring to a paper entitled "Background: Other Than Honorable Discharge"?

Mr. CREDLE. Yes, sir, released by the area veterans national research project.

Mr. KASTENMEIER. Without objection that will be received as part of the record.

[The document entitled "Backgrounds: Other-than-Honorable Discharges—Problems, and Prospects for Change" follows:]

BACKGROUNDS: OTHER-THAN-HONORABLE DISCHARGES—PROBLEMS, AND PROSPECTS FOR CHANGE

[Released by Vietnam Era Veterans' National Resource Project, Emergency Ministries Concerning the War (National Council of Churches)]

(NOTE.—This is a preliminary survey of the problems and prospects associated with other than Honorable discharges. It is not a comprehensive study, and is being circulated only to provide a general sketch of the situation. Contact us with any additional information that you may have, and let us know if this paper includes any major factual errors.)

OVERVIEW

Roughly 5.7% of the 7,490,088 Vietnam era veterans have other-than-Honorable discharges:

STATISTICAL SUMMARY: OTHER-THAN-HONORABLE DISCHARGES FOR VIETNAM ERA VETERANS, FISCAL YEARS 1965-73

	General	Undesirable	Bad conduct	Dishonorable
1965	25,477	13,178	2,478	312
1966	20,883	10,544	2,262	273
1967	19,562	99,920	3,048	384
1968	18,260	11,650	3,645	402
1969	18,053	11,208	3,562	187
1970	27,534	22,537	3,956	383
1971	38,376	29,139	4,643	326
1972	43,419	40,018	4,167	356
1973	18,165	14,725	1,531	242
Total (424,805)	229,792	162,919	29,292	2,865

Source: Figures from Department of Defense charts.

A disproportionate percentage of the veterans holding these discharges are minority group veterans and veterans with less than high school educations. These discharges substantially increase the problems many of these veterans already face in finding employment, adequate housing, and adequate medical care. In adding this additional burden to the lives of people who already face well-documented discrimination, other-than-Honorable discharges often reinforce cycles of unemployment, disease, despair, drug addiction, crime, and imprisonment.

A movement of Vietnam era veterans' self-help projects, conceived, staffed, and directed by Vietnam era veterans themselves has arisen over the past several years to cope with the unique difficulties veterans have brought home from this century's most unique and disillusioning war.

Many of these projects are initiating programs to counsel veterans with other-than-Honorable discharges on the procedures by which they may appeal to have those discharges upgraded. Along with several groups who have been involved with various forms of draft and/or military counseling in the past, some of these programs have begun to tie into projects in St. Louis and Washington, D.C. which provide legal research, analysis, and/or representation for individual appeals. These local programs and national projects are forming the nucleus of an evolving network of discharge upgrade counselors which may be able to offer a substantial alleviation of the penalties which veterans with other-than-Honorable discharges are suffering.

Ultimately, however effective this discharge upgrade counseling may become, the problems revolving around other-than-Honorable discharges need systemic solutions. Although a handful of Senators and Congresspersons are interested in the issue and have recently submitted some potentially far-reaching bills, general interest is low in Congress at this time, and the prospects for new laws or policies are distant. However, some veterans self-help projects and some coalitions of civil rights groups are beginning to discuss ways in which they might begin to generate grass roots pressure for new legislation. Some of these groups are also trying to establish programs for bringing precedent-setting challenges to armed forces' discharging and discharge-reviewing policies into Federal Court.

I. BACKGROUND OF THE PROBLEM

A. The Meaning of Discharges

1. Administrative.—The Honorable, General, and Undesirable discharges are given by administrative hearings convened by enlisted persons' commanding officers. The armed forces consider the General Discharge to be "under honorable conditions", and the Undesirable Discharge to be "under conditions other than honorable." Enlisted persons are not presented, and often are not present, at such administrative hearings. They have no opportunity to confront and cross-examine witnesses or to challenge written evidence, and no *verbatim* records of the hearings are kept.

2. Punitive.—The Bad Conduct and Dishonorable discharges are issued as punishments by courts-martial. The Bad Conduct Discharge is issued by Special courts-martial, the Dishonorable by General courts-marital. The Bad Conduct Discharge is considered to be "under conditions other than Honorable"; the Dishonorable Discharge is considered to be the only totally "dishonorable" kind of discharge.

Although there are many valid criticisms to be made of court-martial procedures, they do provide an order of due process which is not present in administrative hearings. Enlisted persons are represented by counsel, do have an opportunity to confront and cross examine witnesses, and have access to a *verbatim* record of the hearing. There are also provisions for appealing courts-martial decisions and courts-martial sentences, while there are no such provisions for appeal *within* the military courts for administrative hearings.

3. Separation Codes.—All discharge papers (DD Form 214's) include separation codes (called "Separation Program Numbers" by the Army and Navy, "Separation Designation Numbers" by the Air Force.) Essentially, these codes state the reasons for the discharges. In theory, these codes are confidential. But, until this year, they have been readily available in published armed forces regulations—and widely distributed, often in partial listings, in papers, manuals, and articles continued in everything from Red Cross and V.F.W. service manuals to

the American Servicemen's Union's *Common Bond*. The following is one such partial listing:

CHART NO. 1. SEPARATION CODES [1]

Favorable codes

201 ETS (Expiration of Term of Service)
202 Expiration term of enlistment
203 Expiration term of active obligated active service
205 Released from active duty, transferred to reserves
219 Erroneous induction
220 Marriage
226 Dependency
227 Hardship
229 Sole surviving son

Unfavorable codes

21U Failure to demonstrate adequate potential for advancement
221 Pregnancy
225 Minority (Under age)
241 Resignation in lieu of reduction for misconduct or inefficiency
242 Resignation for the good of the service
243 Resignation in lieu of board action when based on unfitness
244 Resignation in lieu of board action when based on unsuitability
245 Resignation in lieu of separation for disloyalty or subversion
246 Discharge for the good of the service
247 Unsuitability—"multiple reasons"
248 Unsuitability
249 Resignation (homosexual)
250 Punitive discharge, Class I homosexual—general court-martial
251 Punitive discharge, Class II homosexual—general court-martial
252 Punitive discharge, Class I homosexual—special court-martial
253 Homosexual (board action)
255 Punitive discharge, Class II homosexual—special court-martial
256 Homosexual, acceptance of discharge in lieu of board action
257 Unfitness, homosexual acts
258 Unfitness, "multiple reasons"
260 Unsuitability, inaptitude
261 Inaptitude
262 Unsuitability, enuresis (bedwetting)
263 Enuresis
264 Unsuitability, character and behavior disorders
265 Character disorders
270 Physical disability retirement
271 Unsanitary habits
280 Misconduct, fraudulent entry (enlistee concealed criminal record)
281 Desertion
282 Prolonged unauthorized absence for more than one year
283 AWOL, trial waived
284 Convicted or adjudged a juvenile offender by a civil court
285 Adjudged juvenile offender
286 Repeated military offenses not warranting court-martial
287 Unclean habits, including repeated V.D.
288 Habits and traits of character manifested by anti-social and amoral trends
289 Alcoholism
290 Desertion (court-martial)
291 Alcoholism
292 Other than desertion (court-martial)
293 General court-martial
294 Special court-martial
311 Alien without legal residence in U.S.
314 Important to national health, safety or interest
316 Release, writ of habeas corpus
318 Conscientious objection
361 Homosexual tendencies
362 Homosexual tendencies, desires, or interest, but without overt homosexual acts
367 Erroneous enlistment
367 Aggressive reaction
368 Anti-social personality
369 Cyclothymic personality
375 Discharge, not meeting medical fitness standards at time of entry
380 Desertion
383 Criminalism
384 Drug abuse
385 Pathological lying
386 Established pattern for shirking
387 Habits and traits of character manifested by misconduct
388 Sexual perversion, including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with assault upon a child, or other indecent acts or offenses
41A Apathy
41E Obesity
46A Apathy, defective attitudes, and inability to expend effort constructively
46B Sexual deviate
46C Apathy, obesity
46D Sexual deviate
411 Early separation of overseas returnee
460 Emotional instability reaction
461 Inadequate personality

[1] Printed in *The Common Bond*, publication of the American Servicemen's Union, June, 1973.

Unfavorable codes—Continued

462 Mental deficiency
463 Paranoid personality
464 Schizoid personality
469 Unsuitability
480 Personality disorder
488 Unsuitable (general discharge separation)
489 Disloyal or subversive

In recent months the armed forces have revised their separation codes. The Dep't. of Defense is making a strong effort to keep these new codes confidential, even to the point of declaring published service regulations classified. The Dep't. of Defense has not, however, made any attempt to call back discharge papers from times prior to the revisions to delete the codes on them—which is the only way those veterans' separation numbers could be made confidential.

B. Inequities in Discharging Procedures

1. Loss of due process.—An examination of the statistics for other-than-Honorable discharges issued during the Vietnam era (See the chart on the first page of the "Overview.") reveals that the majority of discharges issued were administrative, not punitive. In many of these cases, enlisted persons were informed that they were going to be tried and convicted in courts-martial unless they signed a waiver that allowed an administrative hearing to discharge them from the armed forces with a General or Undesirable discharge. Most enlisted persons accepted this "option" without understanding that they were bypassing due processes which might have been available to them if they had gone into a court-martial.

An examination of the same statistics reveals a dramatic numerical increase in General and Undesirable discharges in the fiscal years 1970, 1971, and 1972. The numerical increase corresponds to a dramatic increase in the percentage of General and Undesirable discharges in relation to all discharges issued—from respective averages of 2–3% and 1.2–1.4% prior to fiscal 1970 to averages of 4.87% and 4.49% by fiscal 1972.[2] These three fiscal years correspond to a cutback in the armed forces by the Nixon Administration. The most common interpretation of this virtual doubling in the numbers and percentages of administrative other-than-Honorable discharges is that many company commanders made a practice of offering enlisted personnel the "option" of a court-martial or early mustering out with an other-than-Honorable discharge in order to meet their cutback requirements and to remove difficult individuals from their commands without the expense in energy and time of court-martial hearings.

This "option" has been an established practice for several years. The Annual Report of the Court of Military Appeals for 1960 stated:

"The unusual increase in the use of the administrative discharge since the enactment of the Uniform Code of Military Justice has led to the suspicion that the services were resorting to that means of circumventing the requirements of the code. The validity of that suspicion was confirmed by Maj. Gen. Reginald C. Harmon, then Judge Advocate General of the Air Force, at the annual meeting of the Judge Advocates Association held at Los Angeles, Calif., August 26, 1968. He there declared that the tremendous increase in undesirable discharges by administrative proceedings was the result of efforts of military commanders to avoid the requirements of the Uniform Code. Although he acknowledged that men thereby affected were deprived of the protections afforded by the code, no action to curtail the practice was initiated." [3]

2. Racial and Ethnic Discrimination.—Although non-white, non-English speaking enlisted persons made up 9–11% of the composition of the Vietnam era armed forces, they received 24% of the other-than-Honorable discharges. In November, 1972, the Task Force on the Administration of Military Justice in the Armed Forces reported that:

"In all services, blacks receive a lower proportion of the honorable discharges and a higher proportion of general and undesirable discharges than whites with similar educational levels and aptitude. Thus, the disparity cannot be explained by aptitude or lack of education." [4]

---

[2] From Dep't of Defense statistical charts, issued July, 1973.
[3] Quoted in Summary—*Report of Hearings by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 88th Congress*, 1963.
[4] *Report of the Task Force on the Administration of Military Justice*, Dep't of Defense publication, 1972, p. 156.

The same report found that:

"This study revealed a significant disparity between a high school graduate and dropouts, regardless of race. The percentage of dropouts receiving honorable discharge trails graduates of the same aptitude who receive this discharge from 10 to 22 points." [5]

Unfortunately, the Task Force did not analyze the racial or ethnic composition of the enlisted personnel who were high school dropouts. However, studies of the Selective Service System and of voluntary enlistment patterns during the Vietnam era indicates that many high school dropouts in the armed forces were members of white English-speaking ethnic minorities, as well as of black and Spanish-speaking minorities. It may be inferred that these white ethnic persons were among the dropout population which the Task Force referred to.

C. Penalties for Holding Other-than-Honorable Discharges

1. Denial of Veterans Benefits.—Relevant laws state that veterans discharged under "conditions other than *dishonorable*" are eligible for veterans benefits. The status of the Dishonorable discharge is unambiguous, and the armed forces define General Discharges as being "under honorable conditions." To varying degrees, however, Undesirable and Bad Conduct discharges are ambiguous. In many areas of benefits, veterans holding these discharges *may* be eligible, if the Federal agencies involved rule that the specific causes for their discharges are "other than dishonorable":

CHART NO. 2

ELIGIBILITY/INELIGIBILITY ACCORDING TO DISCHARGE [1]

	Honorable	General	Undesirable	Bad conduct	Dishonorable
Benefits administered by:					
Army:					
1. Payment for accrued leave	E	E	NE	NE	NE
2. Death gratuity (6 mo. pay)	E	E	E	E	NE
3. Transportation to home	E	E	E	E	E
4. Transportation of dependents and household goods to home	E	E	NE	NE	NE
5. Wearing of military uniforms	E	E	NE	NE	NE
6. Admission to Soldiers' Home	E	E	NE	NE	NE
7. Burial in National cemetery	E	E	NE	NE	NE
8. Headstone marker	E	E	NE	NE	NE
9. Army board for correction of military records	E	E	E	E	E
10. Army discharge review board	E	E	E	NE	NE
Veterans Administration:					
1. Dependency and indemnity compensation	E	E	TBD	NE	NE
2. Compensation for service-connected disability or death	E	E	TBD	NE	NE
3. Pension for non-service-connected disability or death	E	E	TBD	NE	NE
4. Medal of Honor Roll pension	E	E	TBD	NE	NE
5. Insurance	E	E	TBD	TBD	TBD
6. Vocational rehabilitation	E	E	TBD	NE	NE
7. Educational assistance (including flight training and apprentice training)	E	E	TBD	NE	NE
8. War orphans' educational assistance	E	E	TBD	NE	NE
9. Home and other loans	E	E	TBD	NE	NE
10. Hospitalization and domiciliary care	E	E	TBD	NE	NE
11. Medical and dental services	E	E	TBD	NE	NE
12. Prosthetic appliances	E	E	TBD	NE	NE
13. Guide dogs and equipment for blindness	E	E	TBD	NE	NE
14. Special housing (DV)	E	E	TBD	NE	NE
15. Automobiles (DV)	E	E	TBD	NE	NE
16. Funeral and burial expenses	E	E	TBD	NE	NE
17. Burial flag	E	E	TBD	NE	NE
Other Federal agencies:					
1. Preference for farm loans (Department of Agriculture)	E	E	E	E	NE
2. Preference for farm and other rural housing loans (Department of Agriculture)	E	E	E	E	NE
3. Civil service preference (Civil Service Commission)	E	E	NE	NE	NE
4. Civil service retirement credit (Civil Service Commission)	E	E	NE	NE	NE
5. Re-employment rights (Department of Labor)	E	E	NE	NE	NE
6. Job counseling and employment placement (Department of Labor)	E	E	TBD	NE	NE
7. Unemployment compensation for ex-servicemen (Department of Labor)	E	E	TBD	NE	NE
8. Naturalization benefits (Department of Justice, Immigration and Naturalization Service)	E	E	NE	NE	NE
9. Old age and disability insurance (Social Security Administration)	E	E	TBD	NE	NE

[1] Copied from Department of the Army chart CTA 2-1, issued June 1964.

Key: E—Eligible; TBD—To be determined; NE—Not eligible.

[5] Ibid., p. 15.

In practice, Federal agencies interpret the reasons for other-than-Honorable discharges as strictly as possible and deny most applications for benefits. The Nader Report on Vietnam Veterans and the Veterans Administration states:

"A study of a five-month period in 1972 . . . noted that only 1,305 applications for educational benefits were received from men with bad discharges. Of these 91 were approved. During this same period more than 4,000 veterans with bad discharges applied for unemployment compensation. . . . Of the 4,000 men who applied, 3,400 were found ineligible. Ninety-seven of the cases involved veterans with drug-related discharges; six of these were approved. As one Veterans Administration official remarked after seeing these statistics, Undesirable and Bad Conduct Discharges are effectively the same as a Dishonorable Discharge in terms of eligibility for veterans' benefits." [6]

2. Discrimination in Employment.—Although veterans with General Discharges can obtain their veterans' benefits, they share the plight of other veterans with other-than-Honorable discharges when they apply for employment. Maj. Bradley K. Jones of the Army Judge Advocate General Corps ran a statistical survey of 1000 colleges, professional associations, small business and large business employers to determine to what extent these institutions admitted or employed, or rejected veterans on the grounds they held one of the other-than-Honorable discharges. The following chart summarizes his findings that a "less than honorable discharge obviously hampered an ex-serviceman's employment . . . prospects": [7]

CHART NO. 3.—DISCHARGE CONSEQUENCES [1]

COMPARISON OF DISCHARGE EFFECTS BY TYPES OF DISCHARGE

[In percent]

A. Discharge Inquiries:	
Inquire into discharge	65.6
Accept word	51.8
Look at discharge	46.8
Write Armed Forces	8.6

	Policy influenced by	Reject automatically	Look behind	Probation
B. Acceptance policies:				
I. General	51.2	15.1	77.1	17.9
II. Undesirable	69.1	28.8	66.7	15.6
III. BCD	75.0	35.4	62.2	14.4
IV. Dishonorable	77.4	43.3	56.3	11.6

[1] Ibid., p. 25.

In interpreting these statistical results, Jones emphasized that severity of discrimination was greater in seeking employment or admittance to professional organizations than in seeking admission to school:

"College officials showed a greater awareness of the administrative discharge system than did the businesses. Conversely businesses were more likely to inquire into the serviceman's discharge, more likely to be influenced by it, and much more likely to automatically reject than the colleges. Within the two groups size worked in different ways. Big businesses were more likely to inquire, be influenced by, and disqualify than small businesses. . . . Not surprisingly the bar and medical examiners were markedly more interested in the character of an applicant's discharge. Nearly three-quarters made some inquiry and then either required a look at the discharge certificate or verification from the armed forces. Over seventy percent stated that even a general discharge 'influence' their licensure decision." [8]

3. Additional Forms of Discrimination.—Veterans with other-than-Honorable discharges face additional kinds of discrimination, outside of the crucial areas of benefits and employment. They find it harder, if not impossible, to procure life insurance, medical insurance, mortgages, home improvement loans, bonding, and

[6] Paul Starr, with Jim Henry and Ray Bonner, *Troubled Peace: an Epilogue to Vietnam*, preliminary publication, Center for Responsive Law, 1973, p. VI–22.
[7] Bradley K. Jones, "The Gravity of Administrative Discharge: a Legal and Empirical Evaluation", *Military Law Review*, Winter, 1973, p. 18.
[8] *Ibid.*, pp. 19–20.

credit; their service records establish them as "bad risks." For veterans who have serious medical or psychiatric problems, who need treatment for drug addiction, who live in inadequate housing, etc.—who are already denied benefits and/or adequate employment—these additional forms of discrimination can have disastrous personal consequences.

4. Hidden Discrimination.—The ready availability of the meaning of veterans' separation codes constitutes an additional factor of discrimination. Many personnel offices, particularly those working for large corporations, have copies of these codes, and automatically check all discharge papers for the reasons for discharges. A veteran carrying such codes as "288: Unclean habits and traits of character manifested by anti-social and amoral trends" or "461: Inadequate personality" may well be rejected for employment.

Several veterans' counseling organizations have reported cases in which veterans with Honorable discharges have been consistently rejected for employment. Investigations of their discharge papers revealed "unfavorable" separation codes. The veterans had not even been aware of the meanings of those codes.

5. The Human Cost.—The combination of these penalties consign many veterans to a hopeless cycle of joblessness or chronic underemployment, drug addiction, chronic illness, poverty, and/or crime and imprisonment. Although there have been no definitive statistical studies to date, an emerging national figure indicates that 20–35% of our prison population consists of Vietnam era veterans with other-than-Honorable discharges. A National League of Cities/U.S. Conference of Mayors-sponsored project in Los Angeles, for example, has determined that 25% of the inmates of the California state penal system are such veterans.

This cycle reinforces burdens which those veterans who are members of minority groups already face. For example, a September, 1973 study of the Essex Co. Jail (Newark, N.J.) by a member of the National Fraternity of Veterans revealed that, of 518 persons being held over for trial because of inability to afford bail, 35% were Vietnam era veterans. All but two of these veterans were black. All of them had been arrested *within a year of being discharged.*

D. Inadequate Remedies

1. The Discharge Review Process.—There are administrative remedies for veterans who want to appeal their discharges. Veterans who received administrative discharges may appeal to the Discharge Review Board (DRB) of their branch of the service for relief. If the DRB rejects their claims, they may appeal the DRB's decision to the Board of Correction of Military Records (BCMR) of their branch of the service. Veterans with punitive discharges may appeal directly to the appropriate BCMR.

DRB's consist of military officers, although there are no requirements in the laws or regulations which restrict DRB membership to officers. The Army Discharge Review Board, in particular, consists of senior officers (Colonels and Generals). Their mandate is to determine whether discharges were issued justly and/or through proper following of service Regulations.

BCMR's consist of civilians employed by the Dep't of Defense. BCMR's have a somewhat broader mandate than DRB's (e.g.—They can alter improper medical records.), but examine discharges on much the same grounds as DRB's.

Applicants may make personal appearances before DRB's or BCMR's and may present witnesses, evidence, affidavits, or legal briefs on their behalf. They may be represented by legal counsel or by other persons recognized as legitimate representatives by the various Boards. (The regulations specify that charter veterans' organizations and the American Red Cross are automatically legitimate representatives.) Neither set of Boards has power to *subpoena* witnesses; neither set employs cross-examination in its hearing procedures. However, none of these options are required. Veterans may simply fill in the appropriate applications for relief without further efforts on their own behalf.

Both sets of Boards are located in the Pentagon.

2. Problems with the Discharge Review Process.—In general statistical terms, only 14–17% of the appeals for upgrading of discharges made to the DRB's and BCMR's have been granted over the years. These general statistics reflect more that there are problems within the discharge review process than any deliberate attempt to be overly strict on the parts of the Boards. The charter veterans' organizations and the American Red Cross estimate that they succeed in procuring upgrades for 22–24% of the cases they represent annually, and they also estimate that individuals who can make personal appearances have an even higher chance of making a successful application for relief. There are three reasons that create such a low overall percentage of successful appeals.

First, most veterans have only the vaguest concept of how to appeal their discharges. The majority of them learn of the existence of the DRB's and the BCMR's from officials of the Veterans Administration. The V.A. provides little more than the two-page application form to the Boards. Consequently, few veterans even request representation or a personal appearance at their hearings, let alone develop any evidence about the issuing of their discharges in their military records.

Second, even when veterans do request representation from charter veterans' organizations or from the Red Cross, their cases are not always developed because the charter organizations and the Red Cross operate on the assumption that the basic information about the case is contained in the veterans' military records:

"Beware of becoming too much involved in the merits of a case. . . . Experience has shown that what the man tells the worker may vary greatly with what is in the file. The memory dims, facts fade, and the man will tend to manipulate to his own advantage." [9]

However, in many cases, the information in the military records is unfairly selective or inaccurate. If veterans' representatives assisted them in locating witnesses, developing narratives of their versions of the case, and preparing legal briefs—many more appeals might be granted.

Third, most Vietnam era veterans cannot afford to travel to the Pentagon to make a personal appearance at their hearings. Their odds for successful appeals are thereby reduced, even when they have representation and when their cases are thoroughly prepared.

These three problems affect minority group veterans with other-than-Honorable discharges even more severely than white veterans. They are least likely to request representation from organizations they perceive as "white"-oriented and least likely to be able to afford long-distance trips to Arlington. The Task Force on the Administration of Military Justice observed in their report:

"The data collected from the Discharge Review Boards and the Boards for Correction of Military/Naval Records during the first quarter of calendar year 1972 reflect a noticeable difference in the incidence of relief granted to white over black applicants." [10]

II. BACKGROUND OF THE EVOLVING DISCHARGE UPGRADE COUNSELING NETWORK

Large numbers of Vietnam era veterans regard traditional service and charter veterans' agencies as outmoded relics of another era, whose values, interests, and programs are indifferent to their needs. In increasing numbers, Vietnam era veterans have begun to initiate, direct, and staff there own projects to meet what they perceive as their particular needs.

These projects vary enormously from one community to another. Some, like Seattle's Veterans Action Center or East St. Louis' Veterans Center, offer a wide variety of specific services (including job counseling, prison visitation, marriage counseling, assistance in procuring veterans' benefits). Some, Like San Francisco's Discharge Upgrade Project are designed to present one particular service. Some, like Dayton's Vietnam Veterans Outreach Program are incorporated into traditional city, state, or Federal service agencies, while others (like SEA-VAC again) operate with support from both government and private sources of funding. Some are well-funded and have sizable staffs, while many are still operating on shoestring funding with part-time volunteers.

The evolving network of discharge upgrade counselors is part of this overall development.

A. Overview of Discharge-related programs

Vietnam era groups are attacking the problem of other-than Honorable discharges in one or all of three areas:

First, they are providing face-to-face counseling for enlisted personnel who are still members of the armed forces, when those persons have difficulties which might result in other-than-Honorable discharges. There are some 400 such counselors throughout the country. These counselors use the services of such centralized organizations as CCCO, the Network of Black Draft/Military Counselors, and the Military Lawyers Defense Committee to provide competent legal research and legal representation to advise and defend enlisted persons.

---

[9] American National Red Cross, *Guidelines for Caseworkers in Discharge Review and Correction of Military and Naval Records*, July, 1972, p. 8.
[10] *Task Force*, p. 287.

Second, they are providing face-to-face counseling for veterans who become interested in appealing their discharges to the DRB's or BCMR's. These counselors can turn to the Washington University Military Law Project for assistance in analyzing the material in veterans' military records and in preparing legal briefs for their cases. They can turn to such organizations as the A.C.L.U.'s Military Rights Project (the same staff as the Lawyers Military Defense Committee) and the American Veterans Committee for review of the materials they are presenting in their appeal and for representation before the Boards at the Pentagon.

Third, they are organizing projects to change laws and policies controlling the issuing and the reviewing of discharges, and the laws and policies controlling eligibility for veterans' benefits. These projects range from lobbying activities to attempts to take precedent-setting cases to Federal Court.

Some self-help groups are mounting programs in all three of these areas (the National Fraternity of Veterans, to cite one example), while others offer programs in only one of these areas. (Seattle's Veterans Action Center offers discharge upgrade counseling, but does not offer military counseling or take potentially precedent-setting cases to Federal Court.)

B. The Discharge Upgrade Counseling Network

Some forty-four discharge upgrade counseling programs are beginning to form a network with the following three features:

1. Local Counseling.—The local face-to-face counseling programs are able to service the immediate needs of veterans with other-than-Honorable discharges, at the same time as they initiate the process for appealing those discharges. Some of these programs have begun to establish contact with Law Schools, civil liberties-related attorneys, church groups, and civic groups to build effective preparation of cases and to procure adequate funding and organizational resources to conduct an extensive, long-term counseling program.

2. Legal Research and Analysis.—The Washington University Military Law Project has formed in St. Louis to provide legal research/analysis assistance to any local counseling groups which request it. The Military Project can copy the relevant portions of the veterans' military records at the armed services' records' depository in St. Louis. They can then analyze the files and recommend how the veterans' cases might best be prepared, and, when requested, they can develop legal briefs for the cases, to be presented before the DRB's and BCMR's.

3. A Spectrum of Representatives.—Local counselors can, of course, tie into any organization which is willing to represent cases before the DRB's or BCMR's. In some cases, the charter veterans' organizations or the Red Cross may in fact be ideal representatives, once more extensive preparation has been provided in advance. In most cases, howver, the services of legally trained counsel make a significant difference in veterans' chances for successful hearings (particularly for third-world veterans, and for veterans who cannot afford to travel to the hearings).

The Military Rights Project of the A.C.L.U., in particular, is committed to the development of an effective discharge upgrade counseling network. The Military Rights Project, in addition to providing representation, will review all files, papers, affidavits, and legal briefs being submitted in appeals, and will prepare legal briefs when local counseling programs do not have the resources to do so or when the Military Law Project is unable to.

Chart 4 (below) lists many of the groups involved in the evolving counseling network. A comprehensive list is in the process of being compiled.

CHART NO. 4. GROUPS WHO ARE BECOMING PART OF A DISCHARGE COUNSELING NETWORK

Alton, Illinois
Veterans Service Center [2]
321 E. Broadway
Alton

Amherst, Massachusetts
Draft and Military Counseling Center [2]
R.S.O. No. 95
University of Massachusetts
Amherst 01002

Footnotes at end of article.

Atlanta, Georgia
CCCO [2]
848 Peachtree St., N.E.
Atlanta 30308
(404) 874–0288
Baltimore, Maryland
"Highway 13"/Ft. Meade Project [3]
1590 Annapolis Rd.
Odenton, Md. 21113
Boston, Mass.
Boston Veterans Service Project [2]
355 Boyleston St.
Boston 02116
Buffalo, N.Y.
Veterans Club [2]
Box E. Norton Union
S.U.N.Y.
Chicago, Ill.
Chicago Veterans Project [1]
630 N. LaSalle
Chicago 60610
(312) 744–8118
Vietnam Veterans Against the War [2 3]
827 W. Newport
Chicago 60657
Cleveland, Ohio
V.E.T.A.C.[1]
2905 Chester Ave.
Cleveland 44114
Dayton, Ohio
Vietnam Veterans Outreach Program [3]
40 S. Main St.
Centre City Building
Dayton, Ohio
(513) 225–5400
Denver, Colo.
Rocky Mt. Military Project [3]
1460 Pennsylvania St.
Denver 80203
Veterans Opportunity Center [1]
847 E. Colfax
Denver
(303) 573–7673
Indianapolis, Ind.
Indianapolis Area Draft & G.I. Center [2]
1505 No. Delaware St.
Indianapolis 46202
(317) 253–1905
E. St. Louis, Ill.
Veterans Service Center [2 3]
234 Collinsville Ave.
E. St. Louis 62207
(618) 875–1800
(618) 465–0111
Florrissant, Mo.
Student Union/Vector [2]
Florrissant Valley Community College
Florissant
Holyoke, Mass.
Western Mass. Legal Services, Inc.[2]
193 Main St.
Holyoke 01040

Footnotes at end of article.

Houston, Tex.
Vietnam Veterans Against the War [2]
2912 Wentworth
Houston 77005
(713) 644–3916
Los Angeles, Calif.
Veterans Education Training Service [1 3]
7815 S. Vermont Ave.
LA 90044
Veterans Outreach Program [1 3]
929 N. Bonnie Beach Place
LA 90063
Miami, Fla.
Vietnam Veterans Against the War [1]
South Dade Chapter
14470 S.W. 285th St.
Homestead 33030
(305) 247–2148
Minneapolis, Minn.
Blue Door Counseling Service [2]
3104 16th Ave., S.
Minneapolis 55407
Newark, N.J.
National Fraternity of Veterans [1 3 4]
c/o Veterans Affairs Office
Rutgers U./Newark,
Newark
New Haven, Conn.
National Fraternity of Veterans [2 4 6]
Box 3927
New Haven
(203) 389–4533
New York City, N.Y.
Episcopal Peace Fellowship [2]
Gramercy Park, N.
N.Y.C.
Fund for Human Rights [2]
112 E. 19th St.
N.Y.C.
Mayors Office for Veterans Action [1 3]
80 Myrtle Ave.
Brooklyn, N.Y.
Queens College Veterans Assoc. [2]
Queens College
Flushing, N.Y.
U.S.S.F. [2]
44 Greenwich Ave.
N.Y.C.
Vietnam Veterans Against the War [2]
135 W. 4th St.
N.Y.C.
Workers Defense League [2 6]
Rm. 437
150 Fifth Ave.
N.Y.C.
Nyack, N.Y.
Fellowship of Reconciliation [2]
Box 271
Nyack 10960
Oakland, Calif.
Discharge Upgrade Project [2 4 6]
4919 Telegraph Ave.
Oakland

Footnotes at end of article.

Philadelphia, Pa.
Ed Kopanski [245]
5 E. Penn. Square
Phila.
(215) GE8–2266
CCCO [23]
2016 Walnut St.
Phila. 19103
(215) 568–7971
Portland, Oreg.
Portland Draft and Military Counseling Center [2]
633 S.W. Montgomery
Portland 97201
St. Louis, Mo.
Washington U. Military Law Project [24] [Provides legal research for discharge appeals]
Skinker and Lindell Blvds.
St. Louis 63130
(314) 863–0100 ext. 4902, 4501
San Diego, Calif.
Center for Servicemen's Rights [13]
Box 2016
San Diego 92102
G.I. Forum [13]
430 University Ave
San Diego 92103
(714) 299–3390
San Francisco, Calif.
Demilitarized Zone [23]
Modulux #45
% Associated Students
S.C.U.-S.F. 1600 Holloway Ave
S.F. 94132
Discharge Upgrading Project [246]
3067 24th St.
S.F. 94110
Savannah, Ga.
Veterans Outreach Center [13]
135 Whittaker St.
Savannah
Seattle, Wash.
Seattle Veterans Action Center [23]
1300 Madison St.
Seattle 98122
(206) 583–6595
Sunderland, Mass.
University Draft and Veterans Counseling Service [2]
Old Amherst Rd.
Sunderland 01375
Tacoma, Wash.
Tacoma Veterans Action Center [1]
1301 So. K St.
Tacoma 98405
(206) 383–4008
Washington, D.C.
American Veterans Committee
1333 Connecticut Ave., N.W.
Wash., D.C. 20036
(202) 293–4890
Military Rights Project [245]
410 1st St., S.E.
Wash., D.C. 20003
(202) 544–0447

Footnotes at end of article.

Yonkers, N.Y.
DEROS [1,2]
42 Warburton Ave
Yonkers, N.Y.
(914) 963-1315

[1] Offer variety of services, and are interested in opening discharge review counseling.
[2] Offer discharge review counseling.
[3] Offer discharge review counseling and other kinds of services which veterans with other-than-honorable discharges may need.
[4] Will prepare legal briefs for discharge review cases.
[5] Will represent veterans who are appealing for discharge review or correction of military records before the appropriate boards.
[6] Will take potentially precedent-setting cases on discharge review into Federal courts.

4. Prospects for the Network.—This emerging discharge upgrade counseling network has the prospect for providing significant alleviation of the other-than-honorable discharge problem.

First, the self-help groups have the trust and confidence of the veterans on the street—an advantage which more traditional agencies do not have. This trust means that large numbers of veterans with other-than-Honorable discharges will seek out counseling, once they hear of the service from other veterans in their communities. SEA–VAC and the San Francisco Discharge Upgrade Project, for example, both report that their number of clients mushroomed in number as they became known in the community. A substantial portion of the 424,805 veterans with other-than-Honorable discharges could be reached by these groups.

Second, the self-help groups can often provide ancillary services (job counseling, medical assistance, etc.) from their organizations to veterans with other-than-Honorable discharges. These services enable them to alleviate some of the veterans' immediate problems.

Third, because of the more complete preparation and more legally-trained representation in hearings, this network is likely to increase the percentage of appeals granted. David Addlestone, director of the Military Rights Project, estimates that the network may be able to win as much as 50% or more of their cases.

Fourth, as local self-help group-based programs build outreach to church and civil groups, social agencies, professional associations, etc., general public awareness of the problems with the issuing and reviewing of discharges will increase. This awareness can create the atmosphere in which coalitions of many kinds of local, regional, and national groups concerned about civil liberties, veterans, etc. can form to work for changes in law and policies.

5. Problems with the Network.—The discharge upgrade counseling network faces many problems which must be surmounted before these prospects can be realized. Counseling skills are unevenly distributed throughout the network; the majority of programs are just at their beginning stages, often using novice counselors who can volunteer only a few hours a week. Only a few programs have yet built the extensive outreach to legal, church, and civic resources needed to maximize their effectiveness; many of them need assistance in developing those contacts. Information on counseling is available, but not as widely known and distributed as it needs to be.

Although some groups in the network (CCCO, the Military Rights Project, the Military Law Project) can offer some training in counseling skills, they cannot offer it to large numbers of people in a variety of communities during a short period of time. Similarly, groups who have experience which could assist newer programs in building their community outreach cannot afford the time required to provide that assistance throughout the network.

III. BACKGROUND ON PAST AND PRESENT LEGISLATION

A. Brief History

The history of legislation to alleviate problems in discharging and the reviewing of discharges is short and terse: There isn't much, and most of it died in committee.

In 1963, the Subcommittee on Constitutional Rights of the Senate Judiciary Committee held hearings on other-than-Honorable discharges. Senator Ervin, chairman of the Committee, submitted bills in subsequent years, until the late 1960's, designed to introduce more due process (*verbatim* records, advocacy

representation, confrontation of witnesses, etc.) into administrative hearings. There was not sufficient interest in any of those years to bring the bills out of committee.

In 1971, Rep. Charles Bennett of Florida introduced legislation in the House to bring greater due process into discharging policies. Although his bill was not as far-ranging as the earlier Ervin bills, it also did not raise sufficient enthusiasm to pass committee.

In 1972, Reps. Abzug, Conyers, Dellums, and Ryan introduced a bill calling for universal and unconditional amnesty for persons involved in resistance to the Vietnam war. One of the provisions in the bill is designed to upgrade all other-than-Honorable discharges issued (directly or indirectly) because of war resistance, to Honorable discharges. Hearings on this bill have recently begun, but are attracting negligible interest outside liberal factions in the House.

B. Current Legislation

On May 7, 1973, Sen. McGovern and Rep. Koch introduced identically written bills in the Senate and the House calling for vastly liberalized discharge review procedures, and for the deletion of separation code numbers from all discharge papers.

The former bills (S. 1915 and H.R. 7556) call for civilian review board members, including Vietnam era veterans, for the regionalization of review boards so that they will be more accessible to veterans, for broader grounds upgrading discharges, and for powers to subpoena and procure affidavits as part of hearing procedures. The following excerpts illustrate the scope of these changes:

EXCERPT: S. 1715 AND H.R. 7556

* * * "(a) There are established a number of discharge review boards to be known as Vietnam Era Discharge Review Boards (hereinafter in this subchapter referred to as the 'review boards'). The headquarters of such review boards shall be located, for administrative purposes only, in the Department of Defense.

"(b) The Secretary of Defense shall have authority—

"(1) to determine the number of review boards in session at any time, but such number shall be not less than four nor more than eight;

"(2) to determine the locations where the review boards shall conduct their business, such locations to be geographically disbursed on the basis of population concentrations of discharge appellants; and

"(3) to convene or dissolve review boards in accordance with the number of discharge and dismissal applications pending at any time.

"(c) Each review board shall be composed of eight members to be appointed by the President * * *. Of the eight members on any review board—

"(1) at least two shall be veterans of the Vietnam era and under the age of thirty at the time of appointment,

"(2) at least one shall be a veteran who was in active service prior to the Vietnam era,

"(3) at least one shall be a nonveteran,

"(4) at least two shall be members of the Armed Forces serving on active duty, but may not be from the same branch of service, and

"(5) one shall be a medical doctor in the employ of the Veterans' Administration * * *.

"* * * the review boards shall, upon application filed in accordance with regulations prescribed by the President, review any discharge or dismissal from the Armed Forces granted under less than honorable conditions to any person who served on active duty during the Vietnam era. If, upon the review of the discharge or dismissal of any such person, a review board finds that such person—

"(1) was denied reasonable recourse, solution, or alternatives to the situation or circumstances which precipitated or substantially contributed to his discharge or dismissal;

"(2) was discharged or dismissed under prejudicial, arbitrary, or unreasonably severe circumstances;

"(3) was physically, mentally, or emotionally unfit or incapable of meeting standards or performing assignments required of him by military service;

"(4) was discharged or dismissed primarily for the possession or use of a narcotic drug or marijuana or for dependency on a narcotic drug, but not for the sale of a narcotic drug or marijuana;

"(5) was discharged or dismissed primarily for political, moral, or religious beliefs or activities; or

"(6) no longer warrants or deserves, in the judgment of the review board, the classification of discharge granted him, then the review board shall change the discharge or dismissal or issue a new discharge to indicate that such person was discharged or dismissed under honorable conditions. * * *

"(c) The review boards shall have the power to—

"(1) administer oaths;

"(2) require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of their duties;

"(3) in the case of disobedience to a subpena or order issued under this subsection, invoke the aid of any district court of the United States to require compliance with such subpena or order;

"(4) order testimony to be taken by deposition before any person who they may designate for that purpose and who has the power to administer oaths, and in such instances to compel testimony and the production of testimony in the same manner as authorized under paragraphs (2) and (3) of this subsection;

"(5) require directly from the head of any executive department or agency of the Federal Government available information which the board deems useful in the discharge of its duties, and all such departments and agencies shall cooperate with the review boards and furnish relevant information to the extent permitted by law; and

"(6) prescribe such regulations and procedures as may be necessary to carry out the purposes of this subchapter.

"(d) Any district court of the United States with requisite jurisdiction may, in case of a refusal to obey a subpena or order of any review board issued under this subtitle, issue an order requiring compliance therewith, and any failure to obey the order of the court may be punished by the court as contempt thereof.

The latter bills (S. 1716 and H.R. 7556) call for the elimination of separation codes from all future discharge papers, for the confidentiality of reasons for separations, and for the calling in of discharge papers issued in the past so that separation codes may be deleted from them:

EXCERPTS: S. 1716 AND H.R. 7557

* * * "The Secretary of Defense shall take such action as may be necessary and appropriate to insure that—

"(1) discharge certificates issued to members of the armed forces shall not bear any letter or number code or other indicator of any kind whatsoever which discloses any reason why any such member was discharged or separated from service; and

"(2) no information indicating or relating to any reason why any former member of the armed forces was discharged or separated from service may be made available to any private person (other than the former member concerned) or entity by any office or employee of any military department or agency." * * *

* * * Any former member of the armed forces of the United States who prior to the date of enactment of this Act, was issued a discharge certificate and such certificate contained any information (in code or otherwise) described in section 975 of title 10, United States Code, as added by the first section of this Act, shall, upon application to the Secretary of the appropriate military department, be issued a new discharge certificate without such information appearing thereon.

C. Prospects

The prospects of the Abzug, *et al.* bill is effectively *nil*. There is a general unwillingness in the House to discuss anything resembling the amnesty issue at this point in time, and there is particularly strong hostility to the issue from powerful conservative committee chairpersons, such as F. Edward Hébert of the House Armed Services Committee.

The prospects for the Koch and the McGovern bills are slightly better. It is probable that public hearings will be held on the bills, and it is possible that they will reach debate on the Senate and House floors, provided they do not become linked to the "amnesty" issue. However, they are clearly bills sponsored by liberal elements in Congress, and they will encounter strong opposition from conservatives.

Rusty Lindley, a Vietnam era veteran who was involved in the writing of these bills, believes that they might have a chance to gain the support of moderates and eventual passage *if* there were a lot of grassroots support for them. At the

moment, however, the other-than-Honorable discharge issue is unknown to most people, a technical footnote to Vietnam to a few, and a clear issue only for a handful of people deeply involved with veterans' problems. A great deal of public education and serious program organizing must occur if such grassroots "support" is ever to come about.[1]

Mr. KASTENMEIER. Mr. Armstrong, I gather that you do not appear for the veterans, but appear for the Veterans of World War I in your own capacity. In any event, you are entitled to appear in your own capacity to present your statement.

TESTIMONY OF HON. O. K. ARMSTRONG, IN BEHALF OF VETERANS OF WORLD WAR I

Mr. ARMSTRONG. Mr. Chairman, and members of the committee, I am honored by the opportunity to appear before this committee and to add my word of endorsement to the stand taken by the American Legion, as expressed by our most distinguished authority on the subject of amnesty, the Honorable James A. O'Neil, the gentleman you have just heard. I also speak for the Veterans of World War I, whose resolution on amnesty closely parallels that of the American Legion, and I ask consent that it may be included in the record.

So far as I know, every bona fide veterans organization in America is vigorously opposed to what we call blanket amnesty for those who refused to abide by the laws governing military service. These were laws established by Congress, with the overwhelming support of the people of this Nation, for the defense and protection of our country and the free world. As we have heard in irrefutable testimony, "automatic general amnesty," as this bill calls it, for the deserters and copouts from military service in the late Vietnam war, might include some who fled the country to avoid going to jail for all sorts of offenses—provided they could prove their opposition to the Indochina conflict. It would cover those who pretend to have avoided their duty to their country because of "conscientious objection" to war, despite the fact that if they had been true conscientious objectors the law already provided for their exemption from combat duty. And I mention also in that connection those who call themselves conscientious objectors. And may I say that I favor the law for those who call themselves conscientious objectors.

That came up during my terms in the House of Representatives here. And I support protecting the rights of those who are true conscientious objectors.

Mr. Chairman, this bill, H.R. 236, would provide in several instances for granting honorable discharges to those who come under the general amnesty provisions. If any were denied honorable discharges unjustly, their cases should be reviewed and justice done. But I ask: What would anyone who refused to defend this country in time of

---

[1] For further information regarding legislative work affecting veterans with other-than-Honorable discharges, contact any of the three groups below:
American Veterans Committee (June Willenz)
1333 Connecticut Ave., N.W.
Wash., D.C. 20036
National Association of Concerned Veterans
1120 Connecticut Ave., N.W.
Wash., D.C. 20036
Vietnam Veterans Center (Rusty Lindley)
1910 K St., N.W./Rm. 401
Wash., D.C. 20006

war want to do with an "honorable discharge?" Would he ever display it as something of which he would be proud?

We note this bill would grant general amnesty for those accused of "knowingly counseling, aiding, or abetting others to refuse or evade registration or service in the Armed Forces of the United States, or conspiring to do so."

A number of these subversive persons came to the college campuses during the war, boasting that they could help young men avoid military duty. I consider that these characters were in the same class with those who went over to North Vietnam—not to South Vietnam to oppose the aggression of communism, but to North Vietnam, to act as propaganda agents for the enemies of all human freedom. Ask the parents of the boys in your communities who counseled their sons to go and do their duty, if they approve of this astounding proposal.

The purpose of this bill, scarcely hidden behind its verbiage, is to prove the contention that the war resisters were right: it implies that those stupid fellows who complied with the laws—passed by Congress, mind you—to defend this country, were wrong all the time; that the war in Indochina was morally and ethically wrong; that the war resisters should not be exonerated and restored to positions of honor and trust with no penalties to pay for their betrayal of their country; that those citizens, young and mature, who supported our stand against naked, stark, military aggression of the Communist regime of North Vietnam were wrong, because the war in Vietnam was wrong, illegal, and immoral.

In this connection, Mr. Chairman, I point out that four Presidents; namely, Eisenhower, Kennedy, Johnson, and Nixon all said the same thing in almost identical words: That we were in that war in order to help defend and preserve the freedom and self-government of South Vietnam.

General and unconditional amnesty, as proposed by H.R. 236, would place our Nation's stamp of approval upon the false and dangerous policy that any citizen has the right to obey only those laws of which he approves and disobey those he does not like. Is that what the war resisters believe? Surely all Members of Congress ought to know, as all common citizens know very well, that in that direction lies anarchy and the destruction of orderly government. The spirit that says, "I will obey only the laws I consider good for me," is the very lifeblood of disorder, of lawlessness, of public violence. It must not be tolerated, much less officially encouraged, in the United States of America.

General amnesty, as proposed by this bill, would practically sentence to death our future military strength. If these deserters, draft dodgers, and general violators of military laws, along with their subversive, treasonable counselors, are exonerated and their violations of law given approval, why should anyone in the future answer the call to military duty? Why should any young man enlist, or respond to the draft, if the law violators, hiding behind false moral and ethical principles, are to receive the same honorable treatment as he will?

Mr. Chairman, I pause here to say that in my opinion the one thing immoral and dishonorable about the late war in defense of the freedom and self-government of South Vietnam was the refusal of our Government to permit our fighting men to win a prompt, complete, and final victory. As one who proudly wore the uniform of my country in time

of war—a war we were told to win, and did win—I declare that never again should our young men be enlisted or drafted for combat duty without full public assurance that they will be allowed to win a victory as promptly as possible. Had this been our policy in Indochina, it would have saved the lives of thousands of our boys, and tens of thousands of the Vietnamese people—lives that were lost because of our no-win policy of uncertainty and cowardice.

After bill 236 is consigned to the oblivion it deserves, what then? Let us follow that wise course, the one followed after World War II, so ably presented before this committee by one who was there: Either by congressional action or Executive order, let us have a commission whose duty it will be to take up and study, individually, each case coming under violation of the Selective Service law or acts pertaining to military duty. Let those who have a case of honest misunderstanding of their rights as conscientious objectors be considered. Let the backgrounds, the records for obedience to law and order or for lawlessness, and any extenuating circumstances, be carefully considered. Let the civil rights of each person be protected. Then as under the successful work of the former commission, let recommendations for justice be done. Let those who willfully violated the laws of this country be given the proper penalties.

I agree with my fellow veterans and many fellow citizens who oppose assigning some "community service" to the war resisters as atonement for their violations, such as work in a hospital or welfare center. Those regularly employed in such institutions are working there because they consider such service as honorable and helpful to humanity, and not as punishment for some crime. Let us not degrade them by diluting their ranks with those to whom patriotism and service to country meant nothing at all in time of war.

No one, so far as I know, has ever successfully accused the former commission of bias or injustices in their handling of the individuals, case by case, from World War II. Their plan proved just for all. It will prove so again.

That ends my formal statement, and I thank you, Mr. Chairman.

Mr. KASTENMEIER. Do I understand that you formally served in this body?

Mr. ARMSTRONG. Yes, I did.

Mr. KASTENMEIER. When was that?

Mr. ARMSTRONG. The 82d Congress, from Missouri.

Mr. KASTENMEIER. I think that is before anyone presently on this committee served. Mr. Rodino and Mr. Donohue may have served then.

You are presently associated and have been in the intervening years with the Readers Digest?

Mr. ARMSTRONG. Yes, sir, I am on the staff of the Readers Digest and have been on their editorial board since 1944, not as a member of that board, but as a private citizen, and as a Veteran of World War II.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. Thank you, Mr. Armstrong, for your testimony. And welcome back to the Halls of Congress.

Mr. ARMSTRONG. Thank you.

Mr. SMITH. I would like to ask a question that isn't really touched on in your statement. I understand you are advocating the establish-

ment of a commission of the kind of the Truman Amnesty Board that Mr. O'Neil served on.

Mr. ARMSTRONG. Yes, sir, I favor that.

Mr. SMITH. Did you hear those two young men who just preceded you?

Mr. ARMSTRONG. Yes, sir.

Mr. SMITH. Do you think it would be a good idea, if such a board were to be established, to also have that board or a similar board consider discharges less than honorable on the same basis as the board would look into the claims of draft evaders to see whether the original decision by the local draft board, or whatever it might have been, in looking to a draft evader, to see if the original decision of the local draft board should be wrong and he could be recommended for clemency?

Likewise, would you look into the military decisions on discharges on the ground of less than honorable to see whether those in the judgment of the commission might be recommended to be changed by the board of military records?

Mr. ARMSTRONG. Yes, sir.

Mr. SMITH. Because I am sure, and I think we are all sure, that the services, the armed services, in giving discharges on terms less than honorable were not always 100 percent correct.

Mr. ARMSTRONG. I am sure of that, Congressman.

Mr. SMITH. Mistakes were made.

Mr. ARMSTRONG. Mistakes were made, and a lot of them. That is why I indicated that if there were any discharges less than honorable that might be unjust, I certainly feel that they should be reviewed.

Mr. SMITH. By either this board, you are suggesting, or another similar board?

Mr. ARMSTRONG. Yes, sir.

Mr. SMITH. That is all. Thank you very much.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. I want to thank you, sir, for your interest and your statement.

I notice that you have been here all day listening very attentatively. And for that I am very grateful.

Thank you.

Mr. ARMSTRONG. Thank you, Congressman.

Mr. KASTENMEIER. Thank you for your appearance here today, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Next I would like to call the last two witnesses.

First, Mrs. Patricia Simon, on behalf of Gold Star Families for Amnesty.

I understand you are from Newton, Mass.

Mrs. Simon, you are most welcome here.

Mr. DRINAN. I take a great deal of pleasure in welcoming a constituent, and a very zealous worker, to this committee. And I commend you on your statement, which I have read. And I know that on this occasion as on previous occasions you will give a very compelling and moving statement of your convictions.

Thank you.

TESTIMONY OF PATRICIA SIMON, ON BEHALF OF GOLD STAR FAMILIES FOR AMNESTY

Mrs. SIMON. As a Gold Star Mother I welcome the opportunity to testify on the issue of amnesty. I hope that many victims of the war will be invited to speak at the hearings, for Americans need to hear from the victims. Most people in our country were not affected by the war which accounts for its lasting so many years. We in the United States didn't live with the terror and devastation we were inflicting 9,000 miles away. The other reason, of course, is that we were constantly deceived by our Government about the nature of the conflict within Vietnam, the character of the Thieu regime (which we now know very well and still support), and the conduct of the war which was not war at all but slaughter.

And now the problem of those who oppose the war here and abroad, is that it is not a problem to most Americans. It is invisible because the exiles themselves are invisible. But more than that, I think Americans just don't want to look back at that war.

Information and insight came at different times to all of us at different times, in and out of the military. My son followed his conscience and went into the Army. With a little more time to question rather than trust our leaders, his conscience would probably have led him in a different direction. I wish it had. He was killed in Cu Shi, South Vietnam, 2 days before his 19th birthday, 3 weeks after he arrived in Vietnam. On his Christmas card from Vietnam a few days before his death, was pictured a maze and through it ran the words: "The people who have worked in darkness have seen a great light." His light came too late for him to extricate himself from the trap that our generation had created, but this awareness came in time for many courageous young men to make the conscious choice of life and peace over war and killing and death.

Roger Williams, a former exile, says in "The New Exiles" that there is nothing sad or negative or tragic about this kind of choice. "The tragedy lies not in the fleeing but in what is being fled."

What was fled was the fact that most of the population, because it did not have to choose between life and death, was allowing leaders with completely upside-down priorities, and drunk with the power of our position, our position in the world and our technology, to wage an undeclared war on a peasant population which was opposing an oppressive regime. Thousands of young men applied for CO's and were refused. As one resister said, "You've got to have a showable ideology. You can have it in your head, but if you can't verbalize it, you've had it."

One of the things they fled was a Selective Service System that discriminated consistently against the poor and uneducated, and which allowed 20 million draft-age men to legally avoid the war.

The President has said, "America will not turn her back on those who served—nor make a mockery of their sacrifice by granting amnesty. The 2½ million who served have paid a price. The few hundred who chose to desert America must pay a price."

If those who demand a price could hear from the resisters and deserters themselves, the agony of their decisions, the estrangement in

many cases from families who could not understand, the loneliness, the poverty, the alienation, they would realize they have paid dearly.

The President's statement reflects and encourages a common narrow definition of service to one's country—that only blind obedience is patriotic. When the resisters refused to participate in the war, they were not deserting their country, but rather its disastrous policy. Americans need to remember that our country was founded on respect for conscience and dissent.

The task first of all for patriotic Americans who passionately want our country to once again be worthy of respect for humane use of its position and power, is to bring the problems of our exiles and veterans with punitive discharges to the attention of the public.

Secondly, we must attempt to dispel the fears that block the granting of an amnesty—fears that history has shown to be groundless; fear on the part of Congressmen that constituents would not understand or accept moral leadership. Fear that all the sacrifice was in vain.

My feeling is that it was in vain unless America can face up to the immorality of our involvement in Indochina. The sacrifice was in vain unless it causes us to resurrect the ideals on which our country was founded. To continue to punish those who prematurely took the position that most Americans now take on the war, is to deny ourselves, as a nation, the opportunity to do some growing up.

One of the major obstacles to the return of our political refugees, is the widespread feeling that an amnesty would be unfair to the men who have died in Indochina and to their parents. I am here to try to counteract this feeling, and I speak for a number of other gold star-parents around the country. We would like other Americans to know that we are in no way compensated for our loss by the continued punishment of those who resisted the war. In fact, we would like to say, "Forgive us for presenting you with such cruel choices," and welcome them fully into our society where they are needed.

I ask the gentlemen of this committee to think about losing their children in an illegal, undeclared, unjustified war and ask themselves if they wouldn't thank God if their sons had found the conscience and the courage to resist that war.

Further, would they want to be responsible for keeping other families unnecessarily apart.

We feel that the granting of a universal, unconditional amnesty would be a living memorial to all the young dead soldiers who leave us the task of giving meaning to their deaths.

The first task of all for patriotic Americans who basically want our country to once again be worthy for respect for human use of its position and power is to bring the problems of our exiles and veterans with punitive discharges to the attention of the public. If those who demand a price could hear from the resisters and the deserters and their families, the agonies of their decisions, the estrangement in many instances from families who couldn't understand, the loneliness, and the poverty and the alienation, they would realize that they have paid dearly.

And, Mr. Chairman, just before I came in to testify, I learned that there is a women here who has a letter from her son who is in exile. The letter was written while he was a reporter covering the war in

Vietnam and before he received his induction notice. In this letter, he describes the reasons he must refuse induction into the military. Would the committee grant permission for this mother to read the letter that she has received from her son?

Mr. KASTENMEIER. Let me consult with counsel on this.

Mr. DIXON. You may wish to schedule Mrs. Morrow as a witness at a later date. We have received many letters from men explaining why they are in exile. These have been accepted for the record. We could handle this letter in the same manner.

Mr. KASTENMEIER. Yes, I would be pleased to receive the letter for the record. I think in the interests of proceeding in an orderly fashion, we would encourage that person to so submit the letter.

Mrs. SIMON. She is not listed as a witness. She just happened to come to the hearing to meet people who are working for amnesty. We just discovered she was here about an hour ago.

Mr. KASTENMEIER. As a matter of fact, I think many people here have one connection or another with amnesty.

Mr. SMITH. I wonder if she could submit the letter for the record.

Mr. KASTENMEIER. Could she submit it?

Mrs. SIMON. That is what I was requesting, that she read the letter.

Mr. KASTENMEIER. Submit it for the record, not read it.

Unfortunately, one of the reasons we are running after 5 o'clock today, is because we are trying to accommodate more people with perhaps more interest than we ordinarily show, in attempting to operate effectively as a legislative body.

[The letter from Mike Morrow referred to above follows:]

FEBRUARY 28, 1968.

Mr. and Mrs. JOHN MORROW,
R.R. 3, Box 3210,
E. Wenotebee, Wash.

DEAR MOM AND DAD: I feel very guilty for not writing sooner. I have just returned from Hue. I stayed 25 days until the end of the fighting. I am returning again today. I did not write because I was both exhausted by the sheer task of recording what was an epic battle in the VN war & the equally important one of keeping alive and because it was impossible for me to get mail out.

I appreciate your anxiety for my safety, indeed at times I was quite anxious about it myself. I do not want to kid you or myself. It is *not* difficult to get zapped over here and I was most fortunate to get through all in one piece. One reporter friend of mine lost an eye and another was cut moderately by shrapnel. I only managed to lose my glasses in a dramatic charge by troops of the 1st Bat., 3rd reg. 1st Div. ARVN on a VC machine gun position along the N.W. corner of the city's walls.

In 25 days I saw much heroism, death, brutality, and destruction on all sides and I left Hue with a rich appreciation for the horror of war. Many of my friends who lived in the city are now dead or missing. What was a beautiful and quiet city has become rubble. Walls of houses shiver in the wind without roofs and windows, a labyrinth of tombstones to a people and civilization that now lies a grotesque and stinking corpse beneath a tattered pall of clouds that refuses to cry. With this in mind I have decided that I will not serve in the military as long as the war is carried on under the present conditions. I will not protest the war and I will continue to write as objectively as possible about it. But I will not be a part of a policy which has no rational foundation yet articulated to me and which borders dangerously to a crime against humanity. I hope you understand. If history is not to be the fate of the irrational forces of men and the natural forces of their environment, then it must be resisted by the friction of conscious decisions of men striving for rationality and dedicated to principle.

Take care, don't worry about me. I love you both very much.

MIKE.

Mr. KASTENMEIER. Do either of you have questions of the witness?

Mr. DRINAN. Mrs. Simon, I want to thank you for coming. I know that the subcommittee will be very interested in some of your experiences concerning the attitudes of Gold Star Mothers and Gold Star Families with regard to amnesty.

Could you tell us just a bit about what you have found among Gold Star Families and their attitudes?

Mrs. SIMON. Unfortunately this project is new. The project consists of communicating with other Gold Star Families. We have only done one mailing, and that was done exactly a week ago today. We have had a little bit of response. Out of nine letters, seven were opposed to amnesty, two were in favor of amnesty, and one family wants to help. They feel very much in favor of amnesty. But it is too early to be able to come to any conclusions or make any generalities about their feelings.

Mr. DRINAN. Could I ask a related question?

I know that you have spent a long day here and heard all the witnesses. Would you give your judgment to the committee as to what is the real resistance to amnesty and where the resistance comes from?

Mrs. SIMON. I think the resistance is in the public in general. But I feel that one of the major problems is that this resistance is encouraged by the present administration. If the people don't know how to cope with something like amnesty, and are told on TV several times a year that we can't have this, and are given several reasons that we can't, including that it wouldn't be fair to Gold Star Parents, then people who have no alternate ways of thinking about amnesty and have no information are inclined to go along with the leadership on something like that.

And the problem is that the public is not informed about amnesty. The administration refers to "several hundred" deserters. Well, we all know there are thousands and thousands. He refers to their fleeing their country, deserting their country, abandoning their country. And we who understand the situation understand that they weren't abandoning their country at all, most of them love their country very much, but they are discouraged with their country's policy, especially in Vietnam.

Mr. DRINAN. In conection with your work, do you know of any organization besides the Vietnam Veterans Against the War that are organized on behalf of some form of amnesty? Maybe you can tell us what, if anything, the VVAW is doing.

Mrs. SIMON. I haven't been in touch with the VVAW recently. They are working for amnesty. I am not up to date on their activities. But there are very many organizations working for amnesty, a large number of organizations all over the country.

Mr. DRINAN. But that is the only veterans group that you know of?

Mrs. SIMON. I can't remember the name of it, but there is another veteran group working for amnesty.

Mr. DRINAN. Your testimony is very moving and compelling, and I am very grateful.

Mr. KASTENMEIER. The Congressman from New York.

Mr. SMITH. Thank you, Mr. Chairman.

Thank you, Mrs. Simon, for presenting this moving statement to us.

I have one question for you, and that is this. Supposing that your

son had died in the course of a legally justified and moral war, if there is such a thing, and you believed that it was a legal, moral and justified war, would you still feel about amnesty and those who had chosen not to be involved in that as you do in the case of Vietnam?

Mrs. SIMON. That is a hard question to answer, because I only have experience with one war, this war. I feel that I would still want amnesty. It seems to me that there is nothing gained for a country or for individuals by keeping our young people out of their own home lands. It makes no sense. I can't see any purpose to be gained. I am sure I would still be for amnesty.

Mr. SMITH. Thank you.

Mr. KASTENMEIER. I appreciate your statement, Mrs. Simon. Thank you very much.

Now as our concluding witness today we have Rev. Robert Barger, who has also written extensively on theology and amnesty.

You may proceed.

Mr. DRINAN. May I just welcome you here. I have a flight to my district that won't wait for me, but I read your testimony, and I am very moved by it. It is a very effective statement, and I am most grateful.

TESTIMONY OF REV. ROBERT NEWTON BARGER

Father BARGER. Thank you, Mr. Chairman.

May I ask that this statement be submitted for the record.

Mr. KASTENMEIER. It will be received without objection and made a part of the record.

Father BARGER. Thank you. And I will summarize it briefly.

I would like to preface it with a request, or just my own observation, on a statement that was made a couple of witnesses ago, and that is that the supreme political act is war. I think that the supreme political act is the achievement of the common good. And I think that there may be more than a question of terminology there.

Amnesty, I would like to suggest and hope, is a means of bringing about the common good.

In speaking today for amnesty, which means forgetting, I am not suggesting that we forget the war. And I think that God should help us if we should ever forget this particular war. What I am recommending is that amnesty be granted as a means of forgetting the question of further punishment in connection with it.

I think a very important point to stress—and if I offer nothing more than this I will feel that I have served my purpose—the meaning of amnesty, it does not mean exoneration, that these people were right who resisted, and, therefore, we recognize that by exonerating them. It does not mean pardon, on the other hand, that these people were wrong, but we forgive them. Rather it means that we are not making a judgment, every person who resisted—and as was pointed out, it was a very small minority of people who were called on personally to make that decision—every person who resisted had to make their own decision. But I suggest that we as a nation are not in a historical position yet to decide on the blame for the Vietnam war.

I would say just a word in closing here that I think theology would support our not allowing domestic recrimination for the war to devolve by default on those who would not cooperate with the Government's

purposes. I point to only two verses in the Scripture. The first is from the Book of the Leviticus, chapter 19, verse 18, which the witness for the American Jewish Congress, Rabbi Heschel, quoted. The verse has a second part which we are much more familiar with. The verse in its entirety reads:

> You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself.

And that Jesus made into the second part of the great Commandment.

The other verse—and I would like to close with this—is a verse from the Lord's Prayer:

> Forgive us our trespasses as we forgive those who trespass against us.

I suggest that that is a very risky prayer for anyone to say who takes a hard line against amnesty. Thank you.

[The full statement of Reverend Barger follows:]

TESTIMONY OF REV. ROBERT NEWTON BARGER, MARCH 8, 1974

My name is Robert Newton Barger. I reside at 604 East Armory Avenue, Champaign, Illinois 61820. I am a formr political science teacher, and presently am instructor in Christian Morals in the Newman Foundation at the University of Illinois at Urbana-Champaign. I also serve as an attorney before the Tribunal of the Catholic Diocese of Peoria, the chairman of the Church Law Committee of the Peoria Priest Senate, the president of the Religious Workers Association at the University of Illinois, and the president of the Committee for a Healing Repatriation (an Illinois not-for-profit corporation).

I would like to include in my testimony today the prayer which I offered yesterday in the House chamber while serving as visiting Chaplain to Congress, and also the chapters dealing with theology, history, law, people, ethics and strategy from my book Amnesty: What Does It Really Mean, published this year by the Committee for a Healing Repatriation at the above address.

The prayer is as follows:

"You shall not take vengeance or bear any grudge against the sons of your own people."—Leviticus 19.18.

Father of Mercies, inspire us for leadership in healing the divisions that exist within our Nation. As we have made efforts to make peace abroad, strengthen our purpose to do likewise now at home. Never let us forget the missing in action, nor the returned veterans, or those who for reasons of conscience have left our constituencies. While we cannot bring back our sons who have bravely died, move us to reflect Your generosity and concern for those still missing in action, for our forgotten veterans, and for our exiled sons. We ask this through Him who came to seek and to save the lost. Amen.

THEOLOGY AND AMNESTY

Today the United States of America, our homeland, is a nation divided, and as President Lincoln has reminded us, a house divided against itself cannot long stand. We have wounds, and they need to be healed. We are not at one, and so we stand in urgent need of reconciliation. The Vietnam war, whose decade-long duration was responsible for much of the division which we experience, has not left us totally at peace, even tho our involvement in it is now over. There is still the question before us: . . . what to do with the war resisters. This question involves a tension between justice on the one hand, and mercy on the other. The resolution that we make of this tension between justice and mercy will provide the answer to what kind of reconciliation we can reasonably expect. In other words, how we treat those who have conscientiously evaded the draft or deserted from the war will determine in large part whether we will, or will not, have that domestic tranquility of which our Constitution speaks.

I am going to make here some theological observations on the political question of amnesty. I would like to state at the outset that I am well aware of the danger of attempting to take concepts from the spiritual realm and apply them in the political order. The brilliant Protestant theologian, Reinhold Niebuhr, in his

classic study entitled *Moral Man and Immoral Society*, has expressed a healthy pessimism about the possibility of making an individualistic ethic apply to a collective such as a nation-state. But even such a realist as Niebuhr goes on to say:

"Every genuine passion for social justice will always contain a religious element within it. Religion will always leaven the idea of justice with the ideal of love. It will prevent the idea of justice, which is a politico-ethical ideal, from becoming a purely political one, with the ethical element washed out."[1] So, theology can and must supply ideals for the reflection of the national sovereign . . . and in the case of a democracy such as ours, the sovereign is us. The government is responsible to us, and that is why, ultimately, we the people, will get the kind of justice or mercy that we earnestly seek—or, . . . we won't get it, if we grow indifferent.

The question of amnesty for the Vietnam war resisters illustrates the tension between justice and mercy which is troubling our society today. I should like to turn to sacred scripture for some insight for a solution to this problem. But, before I do, I think it is necessary to point out that there are at least three possible motivations for the granting of an amnesty. First, we may believe that the war resisters were morally wrong, that their actions encouraged the North Vietnamese and thus prolonged the war, increasing the loss of life on both sides, but that by means of an amnesty we should forgive them. Secondly, we may believe that the war resisters were morally right, that the war had gone on for nearly a decade and might have continued much longer were it not for their dissent, and hence by means of an amnesty we should exonerate them. Or thirdly, we may not make any public judgment about the war resisters, refraining from either condemning or condoning them, but simply bring them back and repatriate them, forgetting about the guilt or innocence aspect. This is literally the meaning of the word "amnesty": that is, "forgetfulness," or "oblivion."[2]

For purposes of reflecting on the problem in the light of scripture, I will be dealing at various points in my scriptural examples with these three motivations to see if there might be a theological basis for amnesty. Before I start, I'll give you my own personal opinion as a former political science instructor and current Christian Morals instructor, and that is that the war resisters were in fact morally correct . . . but I will go on to give you a preview of my ultimate conclusion, which is: that we should avoid judgment on the morality of the war resisters' actions and follow the third motivation for amnesty, namely: that we take amnesty in its literal sense and not make a judgment one way or the other, but simply put the Vietnam war behind us and be reconciled to one another. Now, what does the Bible have to say about all this?

Let us look first at the Old Testament. We usually think of Old Testament morality as very harsh: "An eye for an eye and a tooth for a tooth." In fact, however, when we take the Old Testament as a whole and don't simply draw out "one-liners" like the one I just quoted, we see that mercy is one of the most prominent features evident in the Old Testament. Beginning on the first pages of the Bible, where humankind spoils God's gift of life by sinning, we see the gracious mercy of God at work offering humankind another chance.

As often as man sins—and according to salvation history, that's pretty often!—God calls him back again. . . . God is not only a giving God, He is also a forgiving God. And He tells us in the Jewish Law, in what Jesus was later to join to love of God as the greatest commandment, that we must be giving and forgiving too. This is the way it's stated in the Book of Leviticus: "You shall not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself."[3] The reading about the Cities of Refuge from the Book of Joshua reminds us of God's instruction that those who have killed thru accident should be allowed a place of refuge and then free return to their homeland.[4] Of course the question before us today does not concern those who killed without premeditation, but rather those who, with premeditation, refused to kill. The cases are not the same, certainly, but I suggest that there may be a parallel. How God provided for the solution of this case in the Bible may provide a clue for the solution of our amnesty problem today.

---

[1] Reinhold Niebuhr, *Moral Man and Immoral Society*, New York, Charles Scribner's Sons, 1932, p. 80.
[2] From the Greek, *αμνηστια*.
[3] Leviticus 19 : 17–18.
[4] Joshua 20 : 1–16.

The illustration of God's mercy and loving faithfulness to his people, despite their unfaithfulness, is spread upon almost every page of the Old Testament. But it is in the New Testament that Jesus gives us the most amazing revelation from God, namely, that God is a community. God is three persons in one being: Father, Son and Holy Spirit. If we are created in the image and likeness of God, then we too must live as a community. St. John defines God's unity in community with one word: love. The First Letter of John says quite simply: "God is love."[5] Jesus came to tell us that if we are to live the life of God, if we are to have the Spirit of God in us, we must be loving people. To quote further from the First Letter of John: "Beloved, let us love one another; for love is of God, and he who loves is born of God and knows God. He who does not love does not know God; for God is love."[6]

But of course this leads us to ask the same question that the lawyer asked upon hearing the command of love from Jesus, and that is: "Who is my neighbor?"[7] It is not without relevance to our topic to note that the person that Jesus described as neighbor in this parable-answer was a Samaritan . . . one who had broken off from the land of Israel and who adopted an alternate form of the Jewish religion. He was a dissenter, yes, even a resistor as far as the Jews were concerned. They hated him. And he was the person that Jesus chose to exemplify the idea of neighbor!

In making mention of a parable, I would like to point out that Jesus did not give ready answers for problems. The Gospel records him as giving only one major commandment, and that is to love. To illustrate it he simply told stories. The parables of Jesus are meant to show the quality of love that he asks of us.

Let's take a brief look at two of them. First, the parable of the Laborers in the Vineyard. The householder in the parable represents God. He sends people out to work at the first hour, promising to give them a denarius. Later in the day he sends other people out into the vineyard, promising to give them "what is right."[8] Finally, at the eleventh hour, he goes out and finds some men still standing idle and he sends these in too, again promising to give them "what is right."[9] When it comes time to settle accounts, he treats all of them the same! They all get a denarius. And those who had been working all day long started to grumble. They said it wasn't fair! They said they had borne the heat of the day and here these malingerers came in after the real work was done and they were rewarded the same as the people who had responded to the original call!

And what does Jesus say? I think the reply he has the householder give is really instructive of our handling of the amnesty question. He says to the one who bore the heat of the day: "Friend, I do you no wrong. I choose to give this last person as much as I give you. Am I not allowed to do what I choose with what belongs to me? Or do you begrudge me my generosity?"[10] Translated into present terms, the teaching of Jesus seems to say that magnanimity to the war resisters would not be unfair to those who served. The question before us, then, is whether we care to make God's logic our own.

It should be noted that this fairness consideration can cut both ways. Russell Baker, a columnist for *The New York Times*, has suggested that it was really the American public who dodged the war issue. It sent its young men off to fight and die and, to this day, cannot tell them what it was all about. It is perhaps kinder to us all if we do not try to enter into judgment now.

I'd like to consider next the parable of the Prodigal Son, or, as I think it might be better named, the parable of the Forgiving Father. The younger son in the story took his part of the inheritance and went off to a far-away country. And after awhile, the memory of his homeland and his father's house awakened in him the desire to return. So he started back, thinking of the words he would say to ask for readmission to the family. He really didn't get a chance to get halfway thru what he had decided to say because the father, who represents God the Father in the parable, ran out to meet the son before he had even gotten back home. There was no knocking at the door or begging to come in necessary by the son. The father threw his arms around the son and invested him with all the signs of full membership in the household: the ring, the shoes, the robe. Then he decreed a feast to celebrate the return.

---

[5] 1 John 4 : 8.
[6] 1 John 4 : 7–8.
[7] Luke 10 : 29.
[8] Matthew 20 : 4.
[9] Matthew 20 : 7.
[10] Matthew 20 : 13–15.

Now comes the most interesting part of the story. The other brother, the older one, comes along. When he finds out what happened, he is upset. He won't go in. Now he refuses to be part of the family. The father comes out to him and the elder son says: "These many years I have served you, and I never disobeyed your command; but when this son of yours came, who has devoured your living with harlots, you killed for him the fatted calf." The father responds: "Son, you are always with me, and all that is mine is yours. But it was fitting to make merry and be glad, for this your brother"—not 'that son of yours' but 'your brother'—"was dead and is alive; he was lost and is found." [11]

This parable, as the former one, tells us that reconciliation, for God, isn't based on strict justice, but rather on generosity.

Now I would like to look briefly at St. Paul's teaching. In his letter to the Ephesians he asks us not to grieve the Holy Spirit—God's spirit in us. He says: don't be unfaithful to it. He asks us to put all bitterness and wrath and anger and clamor and malice away from us. He asks us to be tenderhearted and forgiving, as God has forgiven us. We are called upon to be imitators of God. We have to pass along forgiveness.[12] Thus in the Lord's Prayer we pray: "Forgive us our trespasses, as we forgive those who trespass against us." [13] I submit that this is a very risky prayer for someone to say who takes a hard line on amnesty!

Permit me to return to one final quote from the Gospel. Jesus says: "Be merciful, even as your father is merciful. Judge not, and you will not be judged; forgive, and you will be forgiven . . . the measure you give will be the measure you get back." [14]

It is perhaps thoughts such as these that inspired the late Richard Cardinal Cushing to ask the following question in his last Easter message: "Would it be too much to suggest that we empty out our jails of all the protesters—the guilty and the innocent—without judging them; call back from over the border and around the world the young men who are called deserters, drop the cases that are still awaiting judgment on our college youth? Could we not do all of this in the name of life, and with life, hope . . . wherever our young people, even for reasons we do not know, stand in need of mercy let us reach out to them." [15] The Cardinal puts that as a question—and that is the way it must be treated, as a question put to each of us.

I personally believe that it would not be too much to ask because I believe that we, as a nation, currently need reconciliation more than we need vindictive prosecution of illegal conscientious activity.

The best conclusion to these reflections might well be a prayer. The one I choose is attributed to a man of several hundred years ago named Francis of Assisi. I hope it comes to express more and more a majority sentiment:

Lord, make us instruments of your peace.
Where there is hatred, let us sow love.
Where there is injury, pardon.
Where there is doubt, faith.
Where there is despair, hope.
Where there is darkness, light, and
Where there is sadness, joy.

Divine Master, grant that we may not so much seek to be consoled as to console; to be understood as to understand; to be loved as to love. For it is in giving that we receive. It is in pardoning that we are pardoned. And it is in dying that we are born to eternal life. Amen.

HISTORY AND AMNESTY

The idea of amnesty is not new, nor is it exclusive to the United States. The precedent for it dates back to 403 B.C. in Athens when Thrasybulus proclaimed an amnesty which prevented citizens from being punished for past political actions.

An amnesty was granted to the Huguenots in France in 1598. Napoleon decreed an amnesty in 1802. An amnesty was also granted in 1871 after the civil riots in

---

[11] Luke 15: 29–32.
[12] Ephesians 4: 30–5: 2.
[13] Matthew 6: 12.
[14] Luke 6: 36–38.
[15] Quoted by Senator Edward M. Kennedy in *Hearings on Selective Service and Amnesty before the U.S. Senate Judiciary Subcommittee on Administrative Practice and Procedure* (hereafter cited as *Kennedy Hearings*), p. 179.

France. In England there were amnesties granted after the Civil War in 1651 and to the Boers in South Africa in 1903.[16] France, Norway, Germany, Belgium, Japan and the Netherlands all amnestied their enemies and their own citizens after the second world war.[17]

In the United States, fifteen presidents have exercised the power of amnesty on thirty-seven separate occasions.[18] The first American amnesty dates back to the very beginning of the country. In 1795, President George Washington granted a "full, free and entire pardon" to those who were involved in the Whiskey Rebellion, an insurrection in Pennsylvania, observing:

"For though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet it appears to me no less consistent with the public good than it is with my presonal feelings to mingle in the operations of Government every degree of moderation and tenderness which the national justice, dignity and safety may permit." [19]

John Adams issued "a full, free and absolute pardon to all and every person concerned" in the Fries Rebellion of 1799. Thomas Jefferson in 1807 pardoned all deserters from the U.S. army who would return to their units within four months. James Madison issued three proclamations of the same nature covering deserters in the War of 1812. Andrew Jackson granted an amnesty in 1830 to all deserters from the army, with the interesting condition that they would never again serve in the armed forces of the United States![20]

The Civil War could provide something of an analogy for our present national situation. After that war's end, vigorous prosecution was not undertaken against deserters or draft evaders on the Union side. More interestingly, Abraham Lincoln and Andrew Johnson granted amnesty to the Confederates who had taken up arms against the Union and could have been prosecuted for treason. Johnson stated that:

"A retaliatory or vindictive policy, attended by unnecessary disqualifications, pains, penalties, confiscations and disfranchisement, now as always could only tend to hinder reconciliation among the people and national restoration, while it must seriously embarrass, obstruct and repress popular energies and national industry and enterprise." [21]

The Lincoln and Johnson administrations were together responsible for more than one-half of this nation's amnesties. Johnson, on Christmas day, 1868, issued a universal and unconditional amnesty, saying: ". . . universal amnesty would tend to secure permanent peace, order and prosperity throughout the land, and to renew and fully restore confidence and fraternal feeling among the whole people and their respect and attachment to the National Government. . . ." [22] Remaining civil disabilities connected with the Fourteenth Amendment were removed by a congressional amnesty on June 6, 1898.[23]

There was no general amnesty for some time after the first world war (altho in 1924 President Coolidge granted amnesty to approximately 100 persons who had deserted since the World War I armistice).[24] The last amnesty of any significance was given by Franklin Roosevelt at Christmas, 1933, to all violators of the first world war draft laws who had served their sentences.[25] It is true that in 1947 Harry Truman granted a complete pardon to 1,523 offenders of the Selective Service and Training Act of 1940, but in this instance each case was considered separately and the pardons were individual. During the Korean War President Truman pardoned all ex-convicts who had served in the war for at least a year. He also amnestied all who had been convicted of desertion between August, 1945, and June, 1950.[26]

In reflecting on this representative history, it might be noted that each war has been different, conditioned as it was by different times and circumstances. Yet, I believe, the Vietnam War is the most different of all. It has been the longest war in which the United States has ever been involved. Its desertion rate was also the highest of all American wars (nearly double that of the second world

---

[16] Murray, Polner, *When Can I Come Home?*, New York: Doubleday, 1972, p. 133.
[17] *Ibid.*
[18] Allan L. Damon, "Amnesty," *American Heritage*, October, 1973, p. 8.
[19] Quoted in testimony of Henry Schwarzschild, *Kennedy Hearings*, p. 302.
[20] Testimony of Professor Henry Steele Commanger, *Kennedy Hearings*, pp. 182–92.
[21] *Ibid.*
[22] Daniel Migliore, "Amnesty: An Historical Justification for its Continuing Viability," *Journal of Family Law*, Vol. 12, No. 1 (1972–73), p. 70.
[23] Allan L. Damon, "Amnesty," *American Heritage*, October, 1973, p. 78.
[24] *Ibid.*
[25] Migliore, *op. cit.*, p. 79.
[26] Norman Weisman, "A History and Discussion of Amnesty," *Columbia Human Rights Law Review*, Vol. 4, No. 2 (Fall, 1972), p. 533.

war—72.9 per 1000 for World War II, 142.2 per 1000 for Vietnam).[27] And finally, although it is difficult to document this point for a number of reasons, I believe that Vietnam has been America's most unpopular war.

LAW AND AMNESTY

The first consideration under legal aspects is the problem of definition. Amnesty was not a recognized legal term in English common law. It was instead included in the word pardon. This seems to have carried over into the U.S. Constitution which states that the President may "Grant reprieves and pardons for offenses against the United States, except in cases of impeachment."[28] The best legal definition, to my knowledge, appears in a U.S. Supreme Court decision written in 1915:

"The one (amnesty) overlooks offense; the other (pardon) remits punishment. The first is usually addressed to crimes against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the state. Amnesty is usually general, addressed to classes or even communities, a legislative act or under legislation, constitutional or statutory, the act of the supreme magistrate."[29]

The word "forgiveness" in the above-quoted decision should not be misunderstood. It does not imply guilt. Amnesty is neither condemnation nor commendation. As its root indicates, it is simply a forgetting.

Gordon D. Lapides, chairman of the Bay Area Selective Service Lawyers Panel, has indicated the difficulty of assessing where real guilt lies, in the following statement:

"Again and again, one would hear articulated the dilemma of a young man placed in a position of transgressing a 'law' no matter what he did. On the one hand, complicity in the Viet Nam conflict was variously pictured as a violation of the precedent of Nuremburg, of the Geneva accords, or simply of that private law of conscience or 'natural law' which lies at the very heart of the American ideal. On the other hand, the written law of the country seemed to require otherwise. In the eyes of these young men, the human and moral consequences of their actions demanded that they refuse to participate."[30]

The late Rabbi Abraham Heschel has said: "Something precious will have been lost by the American people if they should regard amnesty as a matter of mercy. Much of the hope of the future depends upon a clear recognition that resistance to an unjust war is a sacred right of man."[31] It might be noted at this point that some of the resisters chose exile rather than prison because they felt that accepting a prison sentence would be seen as a tacit admission on their part that they were wrong and the government was right. They felt their going to prison might give a legitimazation to the view that the war was legal, moral and just.

The reflections of Norman Cousins, although lengthy, have relevance here:

"The debate over amnesty has so far dealt with only half a question. The half the American people have been debating concerns the war resisters. The half we have been ignoring concerns the war makers. If there is to be a reckoning, we cannot bypass the responsibility of government leaders for committing men to fight in an illegal war—a war that divided America, created distrust of authority, and that blackened our history. . . . It is difficult to ponder the discussions that went into the framing of the U.S. Constitution, and then to examine the Pentagon Papers, without reaching the conclusion that the Vienam War was a basic violation of both the natural rights and the legal rights of American citizens. Citizens were sent to war without congressional authorization. The Gulf of Tonkin resolution, which was supposed to serve the purposes of that authorization, turned out to be the result of contrived circumstances and was therefore illegal in itself. The 55,000 American lives lost in Vietnam cannot be regarded as legitimate casualties in a military undertaking involving the security of the United States. Rather, they are the result of arbitrary and illegal action by government. . . . It is important for the American people to remind themselves that the United States helped to promulgate the basic principle of the Nuremburg trials after World War II. This principle held that individuals must be held accountable for acts of war."

---

[27] "Amnesty Problem," *Nation*, January 17, 1972, p. 68.
[28] U.S. Constitution, Article II, Section 2.
[29] Burdick vs. U.S. 236 U.S. 79, 94–95 (1915).
[30] *Kennedy Hearings*, pp. 316–317.
[31] *The New York Times*, February 20, 1972.

". . . It takes an act of will rather than of logic or conscience to say that the Nuremberg precedents have no relevance to the Vietnam War.

". . . A case might be made for the fact that such errors and horrors are now behind us, and that our attention must be turned to the challenge of rehabilitating Vietnam and to the larger challenge of remaking America at home. It can be argued, too, that this nation could tear itself to pieces if it ever attempted to fix the blame for everything involved in the Vietnam tragedy. Such arguments are not without merit. But if there is to be amnesty for government, there must also be amnesty for those who refused to acquiesce in the government's efforts to violate its own laws and traditions. Amnesty for all or amnesty for none." [32]

(Cousins' remarks remind me of a comment of Daniel Webster's during the War of 1812: "Where is it written in the Constitution . . . that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it?")[33]

If neither the government nor the resisters must acknowledge guilt or insist upon their own righteousness, then differences can be overlooked. It might be noted that this is different than the reconciliation between God and man in which man must necessarily acknowledge his guilt. Unawareness of this difference might cause some to reject amnesty even tho it is considered as reconciliation.

Another consideration under legal aspects is who has the authority to grant amnesty. As mentioned above, the Constitution vests this power in the President. However, the Supreme Court has held that Congress also enjoys this power. It declared that congressional amnesty ". . . extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment." [34]

Congress even has certain amnesty powers which the President does not have. For instance, the Fourteenth Amendment places disabilities on certain federal and state officeholders who have engaged in insurrection or rebellion against the United States. Only Congress, by a two-thirds vote, can remove these disabilities.[35] More importantly, while a President can grant amnesty, only Congress can reinstate political privileges which have been denied due to the violation of a law. Thus, even if a person has been prosecuted, convicted, served time and been released, in some states he still retains criminal status. He is denied certain privileges, such as voting, holding public office, obtaining public employment and employment in licensed professions such as law, medicine, teaching, barbering, and taxi-driving. Congress can restore these privileges. And with respect to draft evaders who have fled the country, only Congress can restore their citizenship.[36] Many advocates of amnesty are therefore proposing not only the remission of criminal penalties, but also the erasure of criminal status for every offender whose crime would not have been committed except for the war. Almost all advocates, however, envision such an amnesty as applying only to political crimes and not to ones involving injury to life or property.

For both political and legal reasons, then, the most effective amnesty which could be given would be one that would be granted jointly by the legislative and executive branches of the federal government.

PEOPLE AND AMNESTY

For more than three centuries, America has been the place of refuge for political exiles and others fleeing persecution and oppression. One of the unprecedented consequences of the Vietnam War is that America has now produced, for the first time in its history, its own large class of political exiles and refugees.

Who, then, are the people who might be affected by an amnesty? The first class consists of the draft evaders. Some 7,400 men have been convicted by the federal courts for draft violations during the Vietnam era. Prosecution for some 39,000 draft violators is still pending. About 5,700 draft indictments are also pending.[37] More indictments may yet be handed down. Thousands of men never registered for the draft and hence have no present record, but are subject to indictment and prosecution when their situation becomes known.

---

[32] Editorial by Norman Cousins, *World* 4/10/73, p. 14.
[33] William Wick, "The Case for an Unconditional, Universal Amnesty for Draft Evaders and Armed Forces Deserters," *Buffalo Law Review*, Vol. 22 (Fall 1972), p. 31.
[34] *Ex parte* Garland 71 U.S. 333 (1866).
[35] U.S. Constitution, Amendment XIV, Section 3.
[36] U.S. Constitution, Article I, Section 8.
[37] *Amnesty: Questions and Answers*, ACLU leaflet prepared by Henry Schwarzschild.

The second class consists of the deserters. According to the Department of Defense, there are now over 32,000 deserters at large. They are either living abroad or underground in this country. Almost 100,000 men per year deserted from the military during the height of the Vietnam War.[38] Most of them were either apprehended or voluntarily returned to military control. Many of the deserters did not have the benefit of an advanced education or much reading and discussion about the merits of the war before being drafted. Many saw honorable front-line service in Vietnam before deserting. In any case, they determined only after entering the armed services that they could not accept military life and war. The difference between them and the draft evaders is basically one of timing.

To exclude deserters from amnesty would be to make amnesty another instrument of discrimination in our society on the grounds of economic class and race. The burdens of the draft and of combat have fallen disproportionately on the poor and the non-white men of our society because of their lack of college deferments, their lack of counseling about conscientious objector eligibility (an eligibility which, incidentally, was broadened to include atheists and agnostics late in the war—too late for many), and their ignorance of other "legal" means of draft evasion which middle and upper class white men could, and did, use as an excuse to avoid the war. To extend this inequity by amnestying draft evaders, but not deserters, would be a tragedy.

A final note might be added about terminology. The term "desertion" has lost its old, treasonous flavor. The deserters withdrew from participation in a war waged by their country, but they did not actively join the enemy.

The third class consists of the exiles. An estimated 30,000 to 40,000 war resisters are in exile living abroad, most of them in Canada. A few hundred are in Sweden, England, France and other countries. The exiles comprise both draft resisters and deserters. Canada admitted about 20,000 draft-age American men as "landed immigrants" during the Vietnam era, but many of the exiles could not meet the stringent Canadian qualifications for becoming "landed." They entered Canada as tourists and have remained there beyond the expiration of their tourist permits. (A temporary easing of the requirements for gaining "landed" status in mid-1973 did not entirely remedy this situation.) Their illegal status is a severe disability (for example, they cannot legally hold jobs), but the Canadian government has not deported or extradicted any American charged only with the violation of the draft law or with desertion.[39]

The fourth class consists of those with court-martial convictions. About 550,000 men were convicted by military courts of offenses that would not be crimes in a civilian context: over half for absence without leave, about one-tenth for disobedience, others for conduct bringing discredit upon the armed forces, and the like.[40] These men would not have been in the military except for the draft and the war, and their crimes would not have been committed except for the draft and the war.

The fifth class consists of those holding less-than-honorable discharges. About 450,000 Vietnam-era veterans have such discharges. These discharges are given either administratively, that is, without any due process whatever ("general" and "undesirable" discharges), or as a result of court-martial ("bad conduct" and "dishonorable" discharges). All less-than-honorable discharges carry with them severe disabilities, some including loss of veterans' benefits, disqualification for civil service and other employment, licenses, and the like.[41] Less-than-honorable discharges have sometimes been used as a device to rid the services of those considered to the undesirable because of bed-wetting, "bad attitude," homosexual tendency, etc.—even tho they have commited no crime.[42]

The sixth class consists of the civilian protesters and resisters. During the ten years of the Vietnam War, hundreds of thousands of Americans protested the war in demonstrations and acts of resistance. Thousands were arrested, some on minor charges such as disturbing the peace and trespassing, and others on major charges such as conspiracy and espionage.[43]

The seventh class consists of the families and friends of the exiles. They are either living with them in exile or separated from them here at home. They

---

[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] "The Less Than Honorable Discharges," Address by Joe Garcia, Director, Division of Veterans Affairs, City of Seattle, March 27, 1972.
[43] Amnesty: Questions and Answers, op. cit.

would not be the direct subjects of an amnesty, but they would benefit from it by being reunited with those to be amnestied.

The eighth class consists of those governmental leaders responsible for the war. As Norman Cousins has observed above, they too could benefit from an amnesty.

The final class consists of all Americans. We, as a society, would benefit from amnesty for the reasons to be cited in the following chapter.

ETHICS AND AMNESTY

Amnty is not something owed in justice. It is simply an act of generosity. Criticism abounds today that this country is an impersonal machine pursuing national interests and objectives without regard for either its own citizens or the people of other countries. Amnesty would be an opportunity for our nation to respond to this criticism by acting out of humane and selfless principle. It would demonstrate that America is still capable of a communal moral act. It would signal that the country still has some confidence and self-assurance after this long and bitter conflict and does not feel obliged to vindictively prosecute the incidentally criminal behavior of its own political dissenters. Shakespeare's judgment should be thoughtfully considered today: "the quality of mercy is not strained . . . it becomes the throned monarch better than his crown." [44]

But, practically speaking, would not amnesty be promoting disrespect for law? Would we not be promoting arbitrary government, rather than government based on law? Would we not be encouraging desertion? Should people not be punished for their crimes? Must we not obey all laws, and not only the ones that seem good to us? Should people not serve their country when called? And what about "Render unto Caesar what is Caesar's?" Finally, would not amnesty cripple the conduct of any future war?

There are several responses to these questions. First, we've had amnesty before and survived quite well. In fact, the strongest amnesty was granted at the time of our greatest national turmoil, the Civil War. Respect for law has not been weakened by amnesty. It should be remembered that amnesty *is* the law! As former Attorney General Ramsey Clark has said: "It's not a matter of whether we are going to live under the rule of law. It's a matter of how we exercise the rule of law. . . . Of course, the law has to have integrity. Amnesty is integrity. Amnesty is the law." [45] Joseph L. Sax, Professor of Law at the University of Michigan comments:

"Amnesty raises anew the agonizing problem of a society's responsibility to assure that the law is enforced. Often stated is the question whether we can afford not to enforce all the law all the time, the proper—and much more difficult—question is when to refrain from enforcing the law. For it is a platitude among lawyers that if every law were rigorously enforced there would be at least as many people inside the jails as outside them. To take only the most obvious of examples, full enforcement of the common prohibition on the use of profane language in public would almost daily clear the streets of people and sweep them into our prisons." [46]

I believe, to use a recent example, that by not straining the quality of mercy, the ends of justice were wisely served in the tax case of former Vice President Spiro T. Agnew. It remains for the Administration to extend the same logic to the question of amnesty. The reasons alleged for leniency seem much the same in both cases: magnitude of the penalty of loss of high office (read "country" in the case of the war exiles), permanent scars on the nation if prosecution continued, compassion as more in the public interest, etc. Mr. Agnew used to speak of the double standard of the national media. After the Administration's leniency to Mr. Agnew, an amnesty for the war exiles might help to demonstrate that the Administration itself does not have a double standard of justice.[47]

Secondly, disobedience to law is not always bad, it is often useful. Ten years ago sit-ins against racial discrimination were illegal. Today they are recognized as having promoted long-needed legislative reforms. Long-term gains may therefore outweigh whatever disrespect for law might occur as a result of civil disobedience. Law, it should be remembered, is not the ultimate good, but only the imperfect servant of man. Amnesty could be an expression by the government of the temporary predominance of one social value (reconciliation) over

---

[44] The Merchant of Venice, Act IV, Scene 1.
[45] Public Broadcasting Service program "The Advocates," telecast of Feb. 22, 1973.
[46] *Kennedy Hearings*, p. 289.
[47] Letter of the author published in *The New York Times*, Oct. 16, 1973.

another social value (rule of law). It would be a recognition that sometimes and in some situations it is healthier for a society to overlook offenses than to risk a continuation of bitterness from within.

Thirdly, punishment, if it is applied, should serve as a corrective and a deterrent. But what is there to correct in the war resisters? Do we want to break these men of their conscientious principles which in many cases inspired their actions? In the matter of deterrence, what opportunity will there be for them to break any war-related laws again, now that the war is over? As to what prison has done for war resisters, Dr. Willard Gaylin, President of the Institute of Society, Ethics, and the Life Sciences, and Professor of Law and Psychiatry at Columbia University, observes: "The men I met in prison have paid a price in loss of youth, loss of self-confidence, in loss of ideals. All could have been classified as being committed to the principles of non-violence and passive resistance when they entered. By the time they were discharged, none of them accepted these principles." [48] Moreover, haven't the resisters been punished enough already? The terrors of underground life and the bitterness of exile could well be reckoned sufficient punishment, if indeed punishment is what is sought.

To those who argue that one should accept the penalty of the law as witness of their conscientious dissent and inherent respect for the concept of law there is the earlier-mentioned difficulty to be faced of this action being misunderstood as an admission of error on their part. The oft-cited precedent of Ghandi, Thoreau, and Martin Luther King, Jr., is not compelling here. Times and situations change, and with them the way in which principle is implemented may change. It is not inconceivable that in the 70's these figures from history might have joined Dan Berrigan as a "fugitive from injustice." At least I doubt that they would have counselled acceptance of punishment in the Vietnam era as the only morally acceptable or politically effective means of protest. Sister Josephine Disser, C.S.C., has observed: "The draft evaders and deserters contributed a significant symbolic service to their political community by their public exile. The alternative of going to prison would not so much have constituted a symbol, it would have been—and was—simply the ultimate in dehumanization." [49]

Fourthly, we are, of course, bound to serve our country. But the question is: what *is* service of one's country? Did those who blindly followed orders in Hitler's Germany really serve their country? A majority of the people in Germany supported Hitler, but it is interesting to note that his regime produced a flight of exiles, many of whom were acknowledged by the rest of the world as Germany's best people.

At My Lai, a massacre of civilians occurred under the excuse of "following orders." Only one man was convicted in connection with that event. His sentence has already been reduced and the President has promised to review even that reduced sentence. It is shocking to read about a nationwide survey done by researchers at Harvard University which reports: "half the people questioned said they themselves would follow orders and shoot civilians . . . two-thirds of the respondents said they thought most Americans would follow orders and shoot." [50] I think it is becoming clearer to Americans, especially in more recent days, that the Government is not always right. The Supreme Court's decision on abortion has indicated this for some, and the Watergate scandal has indicated it for many others. From Peter's response to the Sanhedrin ("We must obey God rather than men") to Thomas More's response to King Henry VIII ("I am the king's good servant, but God's good servant first"), the government has never been viewed by individuals of principle as the final arbiter of moral concerns.

Fifthly, I would quote from a letter to a draft board written by the father of a student that I once counseled about application for conscientious objector status:

"It is often quoted, 'Render unto Caesar that which is Caesar's.' Right now what 'Caesar' needs most is responsible young men and women who are willing to 'fight' for peace. Not by killing with guns and machines but by reorienting our technology and human resources to improve our understanding and relationships and by using those talents which God has given us for peaceful purposes."

---

[48] Eugene C. Windchy, "When Can I Come Home, A Debate," *Saturday Review*, 22 April 1972, p. 74.

[49] Letter of Sr. Josephine Disser, C.S.C., to the author, dated Jan. 10, 1974.

[50] Reported in "Amnesty for Those Who Said, 'No'—As a Sign of National Repentance" by D. J. R. Bruckner, circulated by the American Civil Liberties Union.

President John F. Kennedy put this same thought in other words when he said: "War will exist until the distant day when the Conscientious Objector enjoys the same reputation and prestige as the warrior does today."[51] In the meantime, in regard to future wars, Dr. Willard Gaylin has offered the following observations:

"What, then, of the concept of example—the general deterrence principle? If these men are forgiven will it not make it easier for other young men, in future wars, to avoid service? The entire crime prevention system in this country rests heavily on this concept—but then our crime prevention system has been a notorious failure. Deterrence, however, requires a sense of immediacy, involvement, and identity. It is unlikely to have any effect with war resisters where the punished example and the potential criminal are separated by years, let alone generations. The war will be different, the society will be different, the men will be different. And meaningful memory will not last that long. Do the young people today really know what happened in 1942 or 1917 or 1863, or if they did know, could they possible relate to it?"[52]

The response of Professor Joseph Sax to this concern about the effect of amnesty on future wars is equally telling:

"One of the most interesting aspects of the amnesty tradition is the light it casts on the question what effect would forgiveness have as a precedent for military recruitment in the future? For several reasons, I think it is plain that it would have no precedential meaning for the future. Our history makes clear that the amnesty question has been dealt with during and after each American war in a quite distinctive way, responsive to the particular situation of the time. Even if one were a close student of history—as few persons likely to be affected by an amnesty are—he would be hard put to govern his conduct on the basis of any specific expectations as to what the government would do in the next war. The only expectation one might reasonably have, at least based on past experience, is that some form of amnesty would be likely in relation to the Vietnam War, as it has been with other wars. In short, amnesties are always quite special events, without significant precedential value, widely separated in time and circumstance. Moreover, it is well known among legal experts that the ability of the law to govern future conduct varies widely according to the kind of conduct sought to be affected. It is easiest to affect carefully planned business conduct by tax statutes, and most difficult to affect conduct guided by passion or conscience. Plainly an amnesty speaks essentially to the latter categories."[53]

The question of fairness needs now to be considered. Since not all draft evaders and deserters were such because of conscience, should not an amnesty board be set up to review each case on its own merits? I have counseled scores of young men on the question of conscientious objection. In this process I have come to know the extreme difficulty and complexity of decision-making in this question. I think in this connection, also, of the story of the final judgment in Matthew 25 where not only the bad, but also the good, have to ask "Lord, when did we see you hungry and feed you?" People are not always in touch with their motivations. God alone knows what finally determines the actions of men, and how any board could be structured so that it would be capable of sitting in judgment on some 70,000 or more objecting consciences with any degree of equity, I do not know. Such a board did, indeed, attempt to function under President Truman, but besides suffering from the above-described drawbacks it was antithetical to the very idea of amnesty which does not attempt to assess guilt or innocence on a case by case basis but instead overlooks judgment and is interested only in reconciliating a whole class of war resisters. The judgment rendered on the amnesty board idea by Douglas Jones and David Raish in their exhaustive study on amnesty in the Harvard International Law Journal is as follows:

"Clearly the creation of a pardon board similar to President Truman's Amnesty Board would pose the greatest number of administrative difficulties. For whereas the Truman Board was dealing with 15,805 known persons within the United States who had all been convicted and about whom much data became available, today there are few records of the numbers, identity, and whereabouts of these exiles. Finding a way to make the exiles known to the pardon board, to compile a complete dossier on each individual, and to allow the exiles to submit to the

---

[51] Quoted in testimony of Bishop Bernard Flanagan in *Kennedy Hearings*, p. 279.
[52] *Kennedy Hearings*, p. 298.
[53] *Kennedy Hearings*, p. 291.

"jurisdiction" of the pardon board without simultaneously submitting themselves to prosecution for their offense would involve an extremely complicated process. In addition, the lack of well-defined standards and the limited amount of time given each case under the Truman Board suggest that the outcome in certain cases must have been highly arbitrary. Although clearer standards might be provided for a board operating today, the larger number of draft evaders makes it unlikely that such a board, regardless of the machinery made available to it, could have the time to reach a well-considered result in individual cases." [54]

Henry Schwarzschild, Director of the Project on Amnesty of the American Civil Liberties Union Foundation, has expressed similar reservations about an amnesty board:

"I know a good many (people) who would very emphatically assert that the standards applied by the Truman amnesty board were inherently and in practice profoundly invidious and discriminatory on grounds of class and race and, indeed, religious affiliation. Among the men who were excluded from consideration for executive clemency in the proceedings of the Truman amnesty board, for example, were all the Jehovah's Witnesses who had refused to participate in that war, whom, by any reasonable standard, I believe, none of us would deem criminals not worthy of pardons. A good many of the others who were not pardoned by President Truman upon the recommendation of the amnesty board were men who could not to the satisfaction of that tribunal present an articulated philosophy of the world, of war, of killing, of justice, of political theory.

"It seems to us that any attempt to assess the subjective motivations—the moral, political, ideological, religious motives—which prompted men at that time and again in our day to dissociate themselves from a national undertaking so grevious as a war would inevitably again lead to discrimination in the case of the war resisters of the Vietnam era. We believe that an amnesty which, after all, is something which undoes, which potentially can undo, the injustices reached by the law itself, ought not to become another instrumentality of discrimination as indeed the draft and the war in very substantial measure already have been for this country." [55]

Also involved in the matter of fairness is the question of alternative service. Should not the war resistors to be amnestied be required to do some form of alternative service? The fact is that alternative service is basically a form of punishment. Punishment implies judgment and guilt and these implications are, again, essentially antithetical to the concept of amnesty. An additional practical point is that any significant social work would not be very effectively accomplished by a system of forced labor such as alternative service.

"If our hospitals need staffing, our strip-mined hills need restoration, or our inner cities community planning, these urgent human and social needs can hardly be met by a labor corps of conscripted and therefore unwilling men. And the agencies of government have not shown themselves especially skilled at channeling large numbers of people into tasks of social reconstruction—bureaucracy is simply not the proper setting for such work, as the problems of the Peace Corps or VISTA plainly teach us." [56]

A difficulty with alternative service that has not been sufficiently considered is that any attempt to impose it might well be unconstitutional. Section One of the Thirteenth Amendment to the Constitution states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." [57]

Still another fairness consideration is that voiced by Senator James L. Buckley of New York: "We cannot forget that for each deserter, for each draft evader, another young American had to be conscripted and exposed to the risks of combat." [58] This seems to me a most peculiar argument, for the choice of either serving or not serving is placed before each person that is called. If not only the first person objects to the conscription, but also the second, third and so on,

---

[54] Quoted in *Kennedy Hearings*, p. 474.
[55] Public Service Broadcasting Service program "The Advocates," *op. cit.*
[56] Statement of Henry Schwarzschild in *Kennedy Hearings*, p. 304.
[57] U.S. Constitution, Amendment XIII, Section 1.
[58] *Senator James L. Buckley's Newsletter*, Vol. 3, No. 3, March–April 1973.

they all do no disservice to a later one, who, by chance, may see his duty as serving in the war.

Even tho amnesty might not be unfair to those who served and survived, would it not dishonor those who have died in Vietnam? First, I do not believe there is an essential difference between these two groups. Secondly, Congresswoman Bella Abzug provides an analogy for this problem when she says: "When our court system sentences a man to death and later strikes down the law under which he was condemned, reversal of the original sentence is ordered, that is, the courts do not insist that the offender be executed for the sake of consistency or of honoring those who were wrongfully put to death before him." [59] The mother of a soldier killed in Vietnam, Mrs. Louise Ransom, has given her own personal testimony: "Everybody says it dishonors the dead to give amnesty. A lot of people cannot presume to speak for the dead. But I presume to speak for them, and I believe it will dishonor the dead if we discredit those other victims of the Vietnam War. We have not advanced the cause of freedom one bit unless we learn mercy without punishment." [60] Mrs. Ransom referred to the exiles as the "other victims of the Vietnam War." Senator Edward M. Kennedy has voiced the same view when he observed: "When we view the results of this war, we find no beneficiaries, we find only victims." [61]

A final question concerns whether amnesty would be fair to those who were legally penalized for their beliefs. Many men did go to prison or performed alternative service rather than fight in the war. The question of equity toward these men arises in regard to the evaders. Leaving aside the fact that many men "legally" dodged the draft without penalty through deferments and other loopholes, the key difference on this point is that the government should rightly be expected to enforce conscription, demand alternative service and sentence violators to prison only as part of a national defense program during wartime. Aside from the fact that war was never formally declared in Vietnam, all hostilities involving Americans have ended, and to continue to demand service or impose punishment would seem more in the nature of vindictiveness than in the interests of national defense. Additionally, those men who chose prison might even be considered to have chosen a less difficult situation in the sense that they could look forward to release and complete freedom after a certain fixed period of time, whereas those who chose exile had to steel themselves for possible permanent separation from their country, and those who went underground had to live with constant fear of discovery and imprisonment.

In conclusion, I believe that the question of who was right and who was wrong concerning the Vietnam War should be left aside in discussing amnesty. Any attempt to introduce such a question would shift the discussion from one about amnesty to one about either exoneration or pardon, depending upon what moral judgment is offered concerning the war. I question whether any individual or group has sufficient information at this point in history to definitely decide this question for anyone other than themselves.

In any event, I do not think an "owed" amnesty for Vietnam should be added to the list of already sufficient examples in American history which illustrate the error of attempting to support political decisions with essentially moral judgments.

I believe an immediate universal and unconditional amnesty should be granted, but that its motivation should be neither commendation nor condemnation for the war resisters or the war makers. Rather, let the basis for it be that, as the U.S. Supreme Court has said in 1915, "forgiveness is deemed more expedient for the public welfare than prosecution and punishment." [62]

STRATEGY AND AMNESTY

Perhaps for some time to come the most important element of action for amnesty will be education. The executive branch of government does not presently seem disposed toward the granting of an amnesty and the Congress appears quite ready to wait until popular support can be developed for this matter before it takes any action. Therefore, the crucial work to be done lies in sensitizing the American public to the dimensions of the problem. Most probably it is only when the public is ready for an amnesty that government representatives will grant

[59] Dr. John M. Swomly, "Amnesty and Reconciliation," *Christian Century*, 7 December 1972, p. 1323.
[60] *The Boston Globe*, February 11, 1973.
[61] *Kennedy Hearings*, p. 177.
[62] Burdick vs. U.S. 236 79, 94–95 (1915).

one. More importantly, it is only then that this action will achieve the actual reconciliation which it is intended to bring about. The war exiles are not hopeful about a legal amnesty unless it is accompanied by the acceptance of them, on the part of the public, as people who are now entitled to take their place in society on an equal footing with everybody else.

Where time permits, the most effective exploration of the amnesty question in a group setting should be done over the period of several sessions. A "package plan" of this sort might be organized as follows:

1. *Raising the question*—The people in the group should determine what facts about amnesty they need to know. Once the basic facts are clear, they should determine the issues that they need to discuss to reach a consensus on amnesty. As a final step in this session, each person should write down the best reason they can think of why an amnesty should be granted, *and* the best reason they can think of why an amnesty should not be granted. This technique has the advantage of assuring that people think seriously about both sides of the question, no matter what side they may happen to favor themselves. Literature should be available at the close of this session so that people may inform themselves more fully on particular aspects of amnesty. Some popular sources of literature on amnesty are: American Civil Liberties Union Foundation Project on Amnesty, 22 E. 40th Street, New York, NY 10016; National Interreligious Service Board for Conscientious Objectors, 550 Washington Bldg., New York Ave. and 15th St., N.W., Washington, D.C. 20005; Clergy and Laity Concerned, Literature Services, 235 E. 49th Street, New York, NY 10017.

2. *Informational input and discussion*—A starter for this session could be a film such as "Amnesty or Exile," a 35 minute black and white documentary containing excerpts of interviews with draft and military exiles, military personnel in the U.S., representatives of the Pentagon, and selections from the Kennedy Senate Subcommittee hearings on amnesty. The film concludes with a pro-amnesty viewpoint, but presents both sides of the question. It may be rented for $25 from the Broadcasting and Film Commission, National Council of Churches, 475 Riverside Drive, Room 860, New York, NY 10027.

Another film which might be used is "Duty Bound." This is a 60 minute color courtroom drama. A strong case for both sides is made during the trial of a war resister. The jury is the viewing audience. This film may also be rented from the Broadcasting and Film Commission of the National Council of Churches. The rental is $25. A dramatic reading might be presented in lieu of a film. The script from "The Advocates" program on amnesty might be used for this purpose. It is available from "The Advocates," WGBH Educational Foundation, 125 Western Avenue, Boston, Mass. 02134, at a cost of $2. Another possibility is the transcript from the "Firing Line" program featuring Wm. F. Buckley, Jr. and Henry Schwarzschild of the ACLU. It is available for 25¢ from Firing Line, P.O. Box 5966, Columbia, S.C. 29250. Still another possibility for starting discussion is to begin the session with a tape. A 20 minute cassette entitled "Amnesty: Is it a Good Idea?" is available at a purchase price of $3 from the Office of Selective Service Information, Lutheran Council in the U.S.A., 315 Park Avenue South, New York, NY 10010.

After discussion has sufficiently clarified the problem, the group should attempt to work out a concensus position. It would be helpful for the group to draft a written statement that specifies its position so that those of its membership, or others who wish to do so, might subscribe to it.

3. *Action for amnesty*—Once the group has arrived at a position favorable to some form of amnesty it should spend some time considering how it might best be influential in promoting amnesty. This is often best done by having the participants in the group "brainstorm" various possibilities. A secretary could write the results on newsprint positioned where the group can keep tabs on them. Suggestions arising from such "brainstorming" will vary depending on the character of the group, but sample possibilities might be: circulate amnesty petitions for forwarding to the President and Congress; write one's own Congressperson and Senators; form a Speakers' bureau composed of parents of men killed in Vietnam who favor amnesty, parents of draft evaders and deserters, veterans of Vietnam who favor amnesty, parents of draft evaders and deserters, veterans of the Vietnam era now opposed to the war; plan programs on amnesty in service clubs and other civic organizations; organize panels composed of representatives of the military, religious leaders, politicians, and conscientious objectors or former exiles or deserters; suggest a sermon on the question of amnesty in churches any synagogues; arrange placement of literature tables on amnesty wherever

possible; write letters to editors; ask for more radio and television discussion of the issue by networks and local stations; raise the question of amnesty on call-in radio and T.V. programs; in conversation, ask people how they feel about amnesty in the light of historical precedent, religious group statements, etc. It should be emphasized that these are only sample possibilities. The imagination and creativity of individuals and groups will hopefully produce others. The important thing is not *how* education is done, but *that* it is done.

Mr. SMITH. Thank you, Reverend Barger. I think that is a very interesting point that you have made. And it is one that perhaps as we go down the road with the amnesty maybe even a more important one, and that is that amnesty does not mean exoneration.

There has been some testimony today that you probably heard that objected to amnesty on the grounds that it amounted to saying the U.S. Government was wrong and these people that had a matter of conscience were right. You are bringing out the fact that amnesty does not mean that, and that maybe a very important point in any future legislation that might come. And we might even in such legislation say that explicitly, in order to make it clear to everybody. But it is a very helpful point.

Thank you.

Reverend BARGER. You are welcome. I just want to underline that amnesty would be neither commendation or condemnation by either the Government or the organizations.

Mr. SMITH. As was pointed out before, something in the nature of reconciliation without judgments being made.

Reverend BARGER. Yes, sir.

Mr. SMITH. Thank you.

Mr. KASTENMEIER. The subcommittee appreciates your statement very much and accepts it in the nature of a benediction on our first of 3 days of hearing on the subject of amnesty. You have also written on this subject, and we look forward to reading the piece that you have already distributed.

Reverend BARGER. Might I claim a point of personal privilege, Mr. Chairman, on behalf of the witnesses who have been here all day, and I am sure the remaining witnesses in thanking you as chairman and the distinguished members of your committee, both the majority and the minority, for holding these hearings and for helping us all to realize more what is at stake.

Mr. SMITH. Mr. Chairman, I would like to say—and perhaps we ought to say for the record—that Reverend Barger has supplied each one of us with his book, "Amnesty, What Does It Really Mean." And we thank you for this.

Reverend BARGER. We are doubly appreciative.

Mr. KASTENMEIER. This concludes the first day of hearings on the question of amnesty. The hearings will resume in this room on Monday morning at 10 a.m. Until that time we stand adjourned.

[Whereupon, at 5:18 p.m., the committee adjourned, to reconvene at 10 a.m., Monday, March 11, 1974.]

[The statement referred to at p. 52 follows:]

STATEMENT ON AMNESTY (OCTOBER 1973)

We ask again that the public and the government face the fact that for all that has happened in our Vietnamese war, only men who are young have been or

are being punished; and that in disproportionate numbers these men are nonwhite and from low economic estate.

We are speaking of those men who are or were imprisoned for refusing induction; of those who expatriated themselves before or after induction or who have lived underground; and of those given "less-than-honorable" or other discriminatory discharges from the military.

We believe that justice—justice that is symmetrical in its equal treatment of all citizens—requires an unconditional amnesty, pardon, or fair restitution for all men who are charged with, may be charged with, or have been convicted for offenses arising out of their refusal to participate in the military action in Southeast Asia, or for offenses against military law while doing so.

A country which has found only a lieutenant guilty for My Lai, has found no one legally culpable for the massive deception revealed in the Pentagon Papers and in the disclosures of later lawlessness and deceit in the war's conduct, has seen its honor sacked by Watergate and similar affairs—such a country so long as it may belong to a just people cannot now impose its penalties only on these young and powerless men. That cannot be fair, cannot be in keeping with our best ideals.

Our war, we trust, is over. The nation now has much to do, much that it can do only as a united people. There is too little mutual trust among us, too much that is corrosive of hopes and spirits.

A general and unconditional amnesty would be a simple and clear act. It would be a sign that we want to live at peace with each other, that we want to end within ourselves the awful division caused by the war, that we want to get on with the work of making this a better land.

Who can be opposed to such an act? Can the dead speak, and advise us; or can any speak for them? Would we really want to turn to parents of the dead and set them speaking against each other, some urging amnesty and some opposed?

Are veterans (including former prisoners of war) opposed? They appear divided, many for, many against, many indifferent. Although interest and weight do attach to the views of the veterans of this war who were themselves enlisted men, even they, in the tradition of our civil society, have now to advance those views as citizens, and not as a distinct group.

Can Congressmen and members of the administration, both present and former ones, who put us into the war and who kept us in it so long, have it in their hearts to absolve themselves while they hurt these young men?

Can those Congressmen who opposed the war, in the way the public empowered them to do, want to hurt those powerless men who opposed the war in the only ways *they* could or knew how, men who in the process helped create and sustain that public disgust with the war which finally gave some success to Congressional effort to end it?

We believe that Congress and the President are, in fact, fully free to act for amnesty, and that they cannot rightfully claim to be held back by constituents' pressures. We believe amnesty, as was segregation in the South, is an issue wherein statesmen would not trade on fears but can, and therefore should, lead. We believe that the people will respond helpfully to forthright leadership, as did people in the South when segregation was outlawed.

We believe that if Congress or the President will give the American people the opportunity to be generous and just, the nation will be so. We ask for that opportunity.

Does this nation, that was established to "form a more perfect union" and to "insure domestic tranquility," not want to heal itself? Do we not want to take this chance on justice?

There are few acts a government can decide upon that clearly and immediately benefit individuals; amnesty would be one. We think it would be even more. We would be saying to ourselves that we now put the Vietnam war behind us, with its terrible freight of bitterness and recrimination, and of corruption and brutality too. We would signal a decisive turning away from the darkness of the war years, and toward rebuilding and restoring and healing, both here and, as we are morally bound to do, in Indo-China. We also would be affirming to ourselves that America has no time or need for vengeance against ourselves, and especially not against our youth. We would, instead, be welcoming the return, as free members of a freer society, of young men who can give much to the future—theirs and ours and our country's.

31-658—74——23

Roger Baldwin, founder and former Director, American Civil Liberties Union.
Rev. Eugene Carson Blake, retired General Secretary, World Council of Churches.
Rabbi Irwin M. Blank, Temple Ohabei Shalom, Brookline, Mass.
Rev. Robert McAfee Brown, Professor of Religious Studies, Stanford University.
Heywood Burns, Director, National Conference of Black Lawyers.
Rev. Will D. Campbell, Director, Committee of Southern Churchmen.
Rev. W. Sterling Cary, President, National Council of Churches of Christ in the U.S.A.
Kenneth B. Clark, Professor of Social Psychology, City University of New York; President, Metropolitan Applied Research Center.
Rev. William Sloane Coffin Jr., Chaplain, Yale University.
John R. Coleman, President, Haverford College.
Robert Coles, psychiatrist, Harvard University; author.
Dorothy Day, Editor and publisher, *The Catholic Worker*.
Patricia M. Derian, Democratic National Committeewoman from Mississippi.
Leslie Dunbar, Executive Director, The Field Foundation.
Vernon A. Eagle, Executive Director, The New World Foundation.
Rabbi Maurice N. Eisendrath, President, Union of American Hebrew Congregations.
Eric H. Erikson, psychoanalyst and author.
W. H. Ferry, Executive Director, D.J.B. Foundation.
Lawrence J. Friedman, President, U.S. National Student Association.
Willard Gaylin, Professor of Psychiatry and Law, Columbia University; author.
Ernest Gruening, former U.S. Senator from Alaska.
Michael Harrington, Chairman, Democratic Socialist Organizing Committee; author.
Rev. Theodore M. Hesburgh, C.S.C., President, University of Notre Dame.
M. Carl Holman.
David R. Hunter.
Rev. James M. Lawson, Jr., Pastor, Centenary Methodist Church, Memphis, Tenn.
John Lewis, Executive Director, Voter Education Project, Atlanta, Georgia.
Robert Jay Lifton, Professor of Psychiatry, Yale University.
Benjamin E. Mays, President, Board of Education, Atlanta, Georgia; President Emeritus, Morehouse College.
David McReynolds, War Resisters League.
Charles Morgan, Jr., Executive Director, Washington National Office, American Civil Liberties Union.
The Rt. Rev. Paul Moore Jr., Bishop of New York, Episcopal Church.
Rev. Robert V. Moss, President, United Church of Christ.
Aryeh Neier, Executive Director, American Civil Liberties Union.
Rev. Kenneth Neigh, retired General Secretary of the former Board of National Missions of the United Presbyterian Church in the U.S.A.
Eleanor Holmes Norton, Chairwoman, New York City Commission on Human Rights.
Hon. Justine Wise Polier.
Roy Pierce, Professor of Political Science, University of Michigan.
Daniel H. Pollitt, Professor of Law, University of North Carolina Law School.
Charles O. Porter, former U.S. Congressman from Oregon; Chairman, National Committee for Amnesty Now.
Rev. Stephen G. Prichard, Director of Training, Institutes of Religion and Health.
Louise Ransom, Director, Americans for Amnesty; Gold Star Mother.
Joseph L. Rauh, Jr., Counsel, Leadership Conference on Civil Rights.
Milton J. E. Senn, Sterling Professor Emeritus of Pediatrics and Psychiatry, Yale University.
Charles E. Silberman, Director, The Study of Law and Justice; author.
William P. Thompson, Stated Clerk of the General Assembly, United Presbyterian Church in the U.S.A.
John William Ward, President, Amherst College.
Raymond M. Wheeler, President, Southern Regional Council; Chairman, Children's Foundation; physician.
Andrew J. Young, Member of Congress from Georgia.
(Titles for identification only.)

[The document referred to at p. 242 follows:]

[From The Nation, Apr. 16, 1973]

THE TRUTH ABOUT DESERTERS

(By Robert K. Musil)

Mr. Musil, a former Army captain active in the GI movement at Fort Benjamin Harrison, was discharged as a conscientious objector. He is associate secretary of the Central Committee for Conscientious Objectors, an agency for military and draft counseling, and co-editor of CCCO News Notes.

Myths abound about deserters. A colorful Howard Johnson's place mat warns diners on the New Jersey Turnpike that picking up hitchhikers can be dangerous—many of them are AWOLs. Even liberal Sen. Philip A. Hart characterized AWOLs at the Kennedy hearings on the draft and amnesty last spring as "guys who take off with the company cash."

In the growing debate over amnesty in the new cease-fire period, everyone is getting into the anti-AWOL act. In a carefully orchestrated media campaign, Administration spokesmen, including columnist William S. White, White House special counsel Charles W. Colson, and speechwriter Patrick S. Buchanan, have tried to minimize the number of deserters and to label them "malingerers, opportunists, criminals and cowards." Even the usually moderate editorial page of *The New York Times*, in discussing amnesty (February 23), draws "a sharp distinction between them [draft resisters] and those who deserted the Armed Forces."

On the surface, those who degrade deserters seem to have a solid case. They point out that unlike draft evaders, AWOLs have already taken an oath to serve their country; many of them have criminal records, or are fleeing prosecution. They add that legal avenues of redress of grievances were open to them. Finally, and most significantly, they claim that the motivations of deserters were neither conscientious or pure. In support of this final point, one of great rhetorical strength in the amnesty debate, they often allude to or quote Pentagon studies from the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs [OASD(M&RA)] that purport to show that only 5 per cent of all deserters were motivated by anti-war feelings.

These myths are held for various reasons. Most of the public is simply ignorant about AWOLs. They rely on World War II clichés and stereotypes of the bad guy slinking away from his buddies under fire. Or, lacking the data or background to challenge them, they simply accept official explanations. Some politicians inadvertently add fuel to the myths when, hoping to appear reasonable and pragmatic, they speak about amnesty for draft resisters, but neglect deserters in order to gain support.

The current Administration campaign to disparage deserters and perpetuate misconceptions is another matter. [See "What Nixon Forgets: Congress Bestows Amnesty" by Harrop A. Freeman, *The Nation*, March 26.] By portraying the numbers of deserters as large as insignificant, and impugning their motives as confused at best, but more likely as dishonorable and criminal, the Administration hopes in one blow to discredit its amnesty opposition, justify its war policies, and cover up longstanding abuses in the armed forces.

In this climate, we need a fresh, hard look at deserters. The facts are difficult to come by, but they clearly explode all of the old myths. First, it must be emphasized that the term "deserter" is simply a convenience. It is used by the military to refer to those persons who have been absent without leave for a period of thirty days or more, been dropped from the rolls of their unit, and then *administratively* classified as deserters for purposes of record keeping, notification of the FBI, etc. No person absent without leave is legally a deserter until convicted of that offense under the Uniform Code of Military Justice. Desertion, as an offense, requires an *intent* to remain away from the military permanently, and is rather difficult to prove. Thus Pentagon statistics about deserters refer only to those persons who have been dropped from their unit rolls, and do not include a far larger number of persons who at any given time are AWOL for less than one month.

The number of deserters during the Vietnam era is staggering and is probably underreported. From fiscal 1965 through early fiscal 1973 (August 1, 1964–December 31, 1972) the Pentagon reports 495,689 cases of desertion, not counting

the Coast Guard. Of these cases, the Pentagon claims that more than 90 per cent have returned to military control (either by apprehension or voluntarily) and that only 32,718 are still at large. Even accepting Pentagon figures for the moment, we can quickly understand the current Administration attempts to vilify deserters. In addition to the well-known GI movement, another significant segment of the armed forces (about 5 per cent of the Army and Marines) protested the war the best way they knew how—by leaving.

If one considers that in 1971 in the Army alone, 79,000 soldiers, or nearly six full divisions (7.3 per cent of all Army personnel), deserted, the problem becomes clear. This desertion rate was more than triple the highest rate during the Korean War. It was also much higher than any rate recorded for World War II, when a greater percentage of U.S. troops were in combat zones and there were no one-year rotations. If it is kept in mind that low-ranking soldiers and those in combat-arms units are most likely to desert (only about one in ten GIs engage in combat), it is evident that in some Army units desertion reached *epidemic* proportions during the war in Vietnam.

If one adds the short-term AWOL rate in the Army (17.7 per cent in 1971) to the desertion rate (there is some overlap for those who had multiple AWOLs or went AWOL before deserting), nearly one-quarter of all GIs walked away from their units for periods ranging from a couple of weeks to years. What were they escaping from? Given the unpopularity of the war at home, the reports of maltreatment and mismanagement of personnel throughout the Vietnam era, a massive GI movement, and desertion rates far higher than for any previous war, one would assume that desertion was related to anti-war feeling. In fact, the rates match escalation and deescalation in Indochina in an almost perfect bell curve. For instance, in 1972, when the air war was escalated and received more national attention, Air Force desertion rates doubled from the year before.

Not so, says the Pentagon. The official Department of Defense Information Guidance Series claims:

"It is human nature that the grass somewhere else sometimes appears greener. Since the beginning of military forces, the urge to "go over the hill" has been more than some could resist. The reasons are also as old as man: financial or family troubles, romantic involvements, earlier misconduct that led to disciplinary action, inability to adjust to military life or family pressures before going overseas. . . . Only a small percentage . . . of the deserters who have fled to a foreign country in recent years have been motivated by political reasons or anti-Vietnam feeling."

Col. Victor A. DeFiori, the Pentagon AWOL expert and spokesman, points to the now widely quoted studies from his office at OASD(M&RA) that show that "only 5 per cent" of those who desert are motivated by anti-war feelings. The Pentagon studies deserve close analysis, since they are the only official studies of desertion available. The methodology, assumptions and interpretation of findings used by the Department of Defense would cause any self-respecting sociologist to go AWOL from the profession.

Although many, if not a majority, of those who desert remain within the United States by going "underground" in large cities or even in their home towns, the samples used in the studies are based on servicemen who are known to have deserted or have attempted to desert to foreign countries. Maj. Gen. Leo S. Benade, Deputy Assistant Secretary of Defense, added confusion about the source of the studies when he testified at the Kennedy hearings that the surveys were based on 660 of those returned to military control from overseas. This kind of questioning in the face of penalties would have been enough to discredit the study. In appendices to the hearings, however, Benade disclosed that he had been in error, and that the motivation studies were based only on reports from commanders in the field who estimate a man's motivation for leaving through an investigation of statements, interviews with friends, etc. These reports are then filed with OASD(M&RA) on Form DD-N(A) 1039. These reports have been required only since December 24, 1970, and are entitled "U.S. Military Absentees Who Have Placed or Have Attempted to Place Themselves Under Control of a Foreign Nation to Protest Against the U.S. or Commit Disloyal Acts." Thus, given the method of collecting data—the compilation of estimates of motivation by field commanders—and realizing that such information became desirable only as political exiles received attention, the Pentagon studies can be seen as a collection of unsupported impressions. They are not even as solid as the answers would have been from those returning to military control—the method presumed by many persons to have been used after General Benade's testimony.

Given all these inadequacies, the Pentagon studies still reveal some astonishing conclusions. Only one-third of the sample had had previous "disciplinary or administrative action" taken against them. And, it must be remembered, upward of 80 per cent of all military courts-martial are for the "crime" of going AWOL. Other military crimes include such vague acts as "disrespect to a superior officer," or the famous catchall of military justice, "all other acts prejudicial to good order and discipline." This provision, Article 134 of the Uniform Code of Military Justice, caught many an anti-war GI in its disciplinary dragnet, and only recently was struck down as unconstitutionally vague by the Washington Court of Appeals.

The reasons for desertion offered in the survey break down as follows: 47.5 per cent, no reason stated; 20 per cent, aliens, or to live with an alien spouse; 10 per cent, under charges or investigation, or escaped from confinement; 5 per cent, Vietnamese War; 4 per cent, family, financial, or personal; 2.5 per cent, claimed C.O. or pacifistic beliefs; 3.5 per cent, inability to adjust to military life; 5 per cent, fear of being killed; 7 per cent, miscellaneous.

If we neglect the 20 per cent aliens as an untypical distortion due to sampling, the Pentagon either does not know the motivations of nearly half the deserters, or they supplied reasons that, to the average mind, are clearly anti-war or anti-military. ("Inability to adjust" might be better translated as, "My drill sergeant was driving me crazy," or "I just had to get out of the Army.") Only 4 per cent are listed under the widely trumpeted and "time-honored" personal reasons. In short, even if the methodology of the Pentagon's study were sound, its conclusions are virtually useless as an indicator of deserter motivation. If anything, they show that GIs did *not* desert simply because "the grass is greener." Privately, Colonel DeFiori admits that motivations are extremely difficult to determine, especially on the basis of such field reports. He adds that the attempt to distinguish between the motivations of draft evaders and deserters is bound to be a futile exercise.

Department of Defense statistics on the numbers of deserters are presented with an equal aura of infallibility, but are equally suspect. On January 1, 1972, OASD (M&RA) released untotaled figures showing the number of deserters from fiscal 1959 through the first few months of fiscal 1972. These were broken down into armed forces members dropped from units and returned to military control by service and year. The figures for those dropped from fiscal 1965–early fiscal 1972 added up to 421,104, while those returned, when added up, came to only 286,625. These figures would indicate that as of January 1972, there were 134,479 deserters at large.

When questioned about this discrepancy, Lt. Col. James Heinbaugh of OASD (M&RA) stated, "That chart is now marked, 'not to be used, inaccurate.' We no longer give the breakdown figures by year for numbers returned to military control. You have the last chart of that type." The chart, however, exactly matches current figures from DOD on numbers *dropped* from unit rolls, which are still given by year. Only the numbers *returned* and the numbers *still at large* are no longer offered by year. They are available only in sumamry. The conclusions to be drawn are obvious and ominous. Either Pentagon recordkeeping from 1958–72 was inaccurate to the tune of 100,000 deserters, or the current figures of those returned to military control have been manipulated to hide a massive problem and serve political ends.

Even if one believes the notion of previous bookkeeping errors and accepts the current figure of 32,718 deserters at large, that figure, too, is open to serious question. The Pentagon likes to pretend that it has a perfect record of the more than 8 million Vietnam-era GIs. This is simply not the case: the recent return of a POW who had been officially buried is but one graphic example of the fallibility of Pentagon records.

Jon Landau, staff attorney for the Central Committee for Conscientious Objectors (CCCO) in Philadelphia, has handled countless returning AWOL cases and has been in touch with other attorneys and counselors. He states, "I'm personally aware of at least twenty cases where returning AWOLs gave themselves up only to find no personnel records of them at all. Other times, the base where a serviceman returns has to communicate with a man's previous unit for information, even though it's supposed to be in Washington." Other military counselors report similar experiences, including numbers of men who were never reported AWOL at all. Rev. L. William Yolton of the Presbyterian Church Emergency Ministry on Conscience and War, says, "Just recently, I counseled with a young woman who was receiving a dependent's allowance the whole time

her husband was in Canada." Given incidents like these, and the general unreliability of Pentagon paperwork in the war years, from civilians at My Lai listed as "128 VC killed" through GIs sent home to await orders which they never received, the Pentagon figure of 32,718 deserters at large must be seen as a rather shaky *minimum*. And, if the suddenly withdrawn records are correct, there may be 134,000 or more deserters still at large. Similarly, the number of deserters reported by the Pentagon to be in foreign countries is far larger than the 2,705 or so currently claimed. This number counts only those persons whose whereabouts are *officially known* to the Department of Defense through investigation and intelligence services. Obviously, large numbers of deserters have been remiss in reporting changes of address.

Whatever the true number of deserters still at large—and they are great enough to cause high-ranking heads to roll in any other army—why do so many service personnel go AWOL? Those in a position to know best are the deserters themselves, other GIs, and the military counselors who have maintained a flourishing practice during recent years. Attorney Robert S. Rivkin, author of *GI Rights and Army Justice* and *The Rights of Servicemen*, served in legal services as an enlisted man and currently defends GIs in Germany for the Lawyers Military Defense Committee of the ACLU. He writes, "Experience has taught us that many GIs are away without leave because of something the military did or failed to do."

Thus, in addition to anti-war feelings that are prevalent in most returning AWOLs seen by military counselors, many GIs were finally motivated to leave because of lack of proper discharges, physical, psychological or racial abuse, improper medical treatment, unfair disciplinary actions, and other failings of the massive and impersonal military bureaucracy. Their individual stories vary, but most originally enlisted in the armed forces, come from working-class families, and do not articulate their feelings well. The main difference between them and the middle-class draft resisters is that often they object only *after* their direct experience of war or life in the armed forces. By then, their legal options and access to outside support and expertise are severely limited. With only a drill sergeant, or unfriendly commander, or career chaplain to turn to, they leave. Like so many refugees, they have voted with their feet.

Take Archie, a Memphis youth recruited into the Marines despite periods of blacking out and a hearing impairment. At boot camp, Archie was continually beaten and abused because drill sergeants thought he was faking when he passed out. So he went AWOL. Finally picked up by the FBI, he was sent to the Philadelphia Naval Base, where he was thrown into the brig despite a physician's recommendation. There he blacked out again, was beaten and thrown under a scalding shower by a guard for his "faking." He was then hospitalized and received death threats if he talked. Finally, Archie was discharged as "undesirable."

Or Tom, a black Marine from Philadelphia who had to quit high school to help his mother, on welfare, raise nine other children. He joined the Marines to earn money. When his wife began having complications with her pregnancy, Tom went to his drill sergeant for help, but got none. It was then that he left Camp Lejeune to support his mother and expectant wife. Someone in his neighborhood thought it would be "best" if he were reported. It wasn't long before the FBI picked him up and returned him to face general court-martial charges.

Stuart is another to whom legal redress was unavailable or improperly denied. He slowly developed conscientious objection to war and requested discharge when his ship at New London, Conn. was armed with nuclear-tipped missiles. The *Welsh* decision broadening C.O. status to persons whose objections were not religious had yet to be handed down, so Stuart could not qualify for discharge. Like many others he faced an almost impossible choice of up to five years of hard labor in a military prison or violating his conscience. He left.

Although Louie had applied for C.O. status from his local draft board (he was turned down) and had been part of an apprentice program in a machine shop (worth a 2–A deferment), he was drafted and sent to Fort Dix. Objecting to war in the first place and feeling that he shouldn't be there at all, Louie soon left Fort Dix and returned to his home town near Harrisburg, Pa. He tried to begin life again, but eventually the FBI began to close in. Louie was lucky; he came to a military counselor who discovered that, like many young men, he had been illegally drafted. A federal judge freed Louie on a writ of habeas corpus within a matter of hours. But he and his young wife could never regain the time lost at Fort Dix, or the months of hell as the FBI closed in.

Scott is typical of the many Vietnam veterans who deserted after they got back to the States. (The problem was so severe that in 1971 the Army quickly dropped its one experiment with allowing Vietnam GIs a mid-tour leave to the continental United States.) He had enlisted in the Marines from Peoria. Soon he was fighting along the DMZ where his position was overrun the first week. Scott has a formidable collection of medals to show for his bravery, but as he fought he became sickened by killing, especially the senseless destruction and killing of civilians by U.S. troops. He turned to his chaplain for help, explaining that he could no longer kill, and wanted out. But he was simply told to stick it out; no mention of C.O. discharges. Like many soldiers in Vietnam, he turned to drugs for escape and became dependent. Upon his return to the States, he again turned to a chaplain for help with his drug problem and his feelings against war, but was merely advised to pray. In desperation, he went AWOL and sought drug counseling. He shook his habit, and then turned to military counselors for help. Despite counseling and an excellent war record, he, too, received an undesirable discharge. Even if a GI is "lucky" enough upon his return to receive an undesirable discharge in lieu of court-martial and stockade time, he is branded for life.

Dan was thrown into the Camp Pendleton brig on a minor charge. Like a number of prisoners there in the late 1960s, he was beaten and hanged by his wrists on a fence for long periods of time. He developed severe psychological problems and went AWOL to Canada. Like many deserters in Canada, he was unable to make it in a strange country and returned to military control despite his hatred and fear of stockades. He too was discharged as undesirable. Since then, he has bounced from one menial job to another and continually threatens suicide. He is barred from VA benefits and very few employers will hire him. Even fewer people seem to care about his days hanging from the fence at Camp Pendleton.

All of these men should have been easily and honorably discharged when their problems first arose, but like most AWOLs they were the unfortunate victims of a policy of retaining personnel at any cost. Although the number of administrative discharges rose rapidly in 1971 as the armed forces tried to reach the reduced force levels ordered by Congress, and have shown a rapid increase in the Navy recently as racial problems remain unresolved, proper discharges were given in miserly fashion. [See "Administrative Discharges: The 'Less Than Honorable' Solution" by John Grady, *The Nation*, February 19.]

One instructor at the Army's Adjutant General's Corps School at Fort Benjamin Harrison, Ind., where personnel officers are trained, bragged that while stationed at Fort Sill, Okla. "he had never let a single discharge get through his office." His attitude—that most GIs seeking discharge are merely shirkers—is not atypical, despite regulations that provide for discharge in a number of clear-cut cases. But even these provisions are not publicized by the armed forces, and are often unknown to GIs.

In order to fill this gap, CCCO had to print and distribute free to GIs thousands of booklets on each of the five types of discharge. Even then, despite a Supreme Court ruling, *Flower* v. *U.S.*, permitting leafletting on open bases, the Army went to court to bar distribution of pamphlets that merely explain the legal rights to discharge. Only recently was the Army overruled in *CCCO v. Fellows*, and distribution of information on discharges permitted.

The results of these policies have been disastrous. For example, the discharge available for persons who become C.O.s after entry to active duty is not even mentioned in the curriculum at the Adjutant General's School, and most GIs still believe, incorrectly, that it is impossible to get out if you did not declare C.O. status to your draft board. Despite this, more than 8,000 GIs applied for C.O. discharge, while thousands more were intimidated after an initial inquiry by being told no such provisions existed. Or they found that their paperwork mysteriously was lost or arbitrarily denied at the local level. Until federal court intervention in the process in 1969, almost all applications that reached the Pentagon were turned down. Thousands of other GIs, of course, never qualified at all because the courts still do not recognize objection to a particular war. Many of these GIs, faced with harsh sentences in military stockades, or violating their consciences, simply went AWOL.

The record is similar with other discharges for erroneous induction/enlistment, hardship, medical or psychological problems. Dr. Curtis Tarr testified before Senator Kennedy's hearings on the draft in 1972 that large numbers of men had been illegally drafted. The Gates Commission, among others, reported that before recent pay raises, many GIs were destitute and living on welfare. Dr. Peter

Bourne has written that the psychological stresses of basic training are even more severe than those experienced in combat. And, of course, reports of racial abuse, stockade beatings, spinal meningitis, and lack of medical care were rampant. Peter Barnes observes in "Pawns: The Plight of the Citizen Soldier" that "every week at Fort Dix, New Jersey, the Army's major Northeastern training base, there are an average of four suicide attempts. . . . Nine actual suicides occurred at Fort Dix in 1968."

It is no wonder that the Nixon Administration is trying to discredit deserters. To acknowledge their true numbers and their real motivations would require an admission that massive numbers of ordinary, enlisted GIs rejected the war, and that countless thousands were denied humane treatment and legal discharges by a military that felt it could keep its troops in the field only by fear and force. If the truth were known about deserters, the Administration might be forced to consider sweeping changes in military justice and personnel policies—including, not insignificantly, the right to dissent from war, and the right to quit one's job.

AMNESTY

MONDAY, MARCH 11, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2141, Rayburn House Office Building, Hon. Robert M. Kastenmeier (chairman) presiding.

Present: Representatives Kastenmeier, Drinan, Mezvinsky, Railsback, Smith, and Sandman.

Also present: William P. Dixon, counsel; and Thomas E. Mooney, associate counsel.

PROCEEDINGS

Mr. KASTENMEIER. The committee will come to order.

Today, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, begins its second day of hearings on legislation relating to the subject of amnesty.

Like our first day of hearings, this past Friday, we again have a larger than usual list of witnesses to hear. For that reason we would respectfully request witnesses to keep their testimony to a maximum of 15 minutes to permit time for questions from committee members.

Our first witness this morning is a former colleague of ours from the House. He is the Honorable Senator from Ohio, Senator Robert Taft, Jr.

We are very pleased to greet you, Senator, and have you return to the House of Representatives and come before this committee this morning. Please proceed.

TESTIMONY OF HON. ROBERT TAFT, JR., A U.S. SENATOR FROM THE STATE OF OHIO

Senator TAFT. Thank you, very much, Mr. Chairman.

I would like to commend the subcommittee for holding these hearings and thank you for permitting me to appear this morning.

The application of our Nation's Selective Service laws during the Vietnam war confirmed a great number of the apprehensions I had regarding the desirability of the continuation of compulsory military service. As members of this subcommittee are no doubt aware, a great number of inequities developed regarding the application of these laws over the last 10 years, particularly with regard to conscientious objection. Not only were legal standards changed in this area, but additionally there were significant variances in the way the military Se-

lective Service System was implemented throughout the country. Unfortunately, even with negotiation of the Paris Peace Agreement on January 27, 1973, and the successful transition to the concept of an All-Volunteer Army, many inequities and problems remain with regard to individuals who refused induction into the Armed Forces, or decided to unilaterally withdraw from service after induction. To date, however, almost with unanimity, any discussion directed toward consideration of the plight of such individuals becomes entangled in emotional debate as to the propriety of U.S. military involvement in Southeast Asia.

I submit to this subcommittee that the issue to be considered is not whether the draft resisters were right or wrong, nor whether the United States should have become involved in the Vietnam conflict. Enough bitterness has already been generated in the discussions of these issues. Rather, consideration should be given to the issue of establishment of a practical method whereby an estimated 30,000 individuals could return to this country or cease to be fugitives without creating further divisions among Americans. Understandably, there will be controversy generated by groups with inflexible positions on this issue, no matter what policy is pursued, but I am of the opinion that a sizable majority of citizens of this country will support constructive action by the Congress and/or the President on this subject.

Particularly, those of us who are elected officials, I believe, must be responsive to problems that have been created in this area—these problems simply will not disappear, no matter how much or how many of our colleagues in the Congress or officials in the executive branch may wish that they would.

In this regard, I would like to quote from a letter that former Secretary of Defense Melvin Laird sent to Cmdr. Ray R. Soden, Veteran of Foreign Wars of the United States, regarding the question of amnesty:

> Throughout my career of public service, I have learned to avoid absolute, dogmatic position. Neither the political system nor the judicial system of the United States works on "blanket" and arbitrary approaches. Both recognize the vital roles of (1) circumstances and (2) motivation in determining political or judicial solutions to our problems. As I have stated, we pride ourselves on administering justice with mercy and understanding.

Mr. Laird goes on to state, and I again quote:

> With respect to the question of a "blanket" or "general" amnesty, let me emphasize that I am now and always have been opposed to a sweeping general grant of amnesty.
>
> However, there are individual cases where the circumstances require that justice provide for what some have termed "conditional amnesty"—

And what I have referred to in my bill as "earned immunity."

> I do not like this term and only use it for lack of a better description of an equitable approach to this difficult problem. It is my view that circumstance and motivation on a case-by-case basis, under our concept of justice, must be taken into account today when dealing with violators of our Selective Service laws. It is noteworthy that only a small percentage of these men have thus far been prosecuted by the Department of Justice, and in these cases widely differing penalties have been assigned to individuals varying by jurisdiction.

Mr. Chairman, I would ask to have this correspondence that Mr. Laird has shared with me printed in its entirety in the hearing record as an appendix to my statement.

Mr. KASTENMEIER. Inasmuch as the letter you refer to was sent to me by Mr. Laird, it will be inserted in the record at this point, together with my letter inviting him to testify. To avoid duplication, the letter appended to your statement will be kept in the files of the subcommittee.

[The letters referred to follow:]

FEBRUARY 20, 1974.

Hon. MELVIN R. LAIRD,
Reader's Digest Association,
Washington, D.C.

DEAR MEL: My Subcommittee on Courts, Civil Liberties, and the Administration of Justice has scheduled hearings on March 7 and March 8, 1974, on pending legislation relating to the subject of amnesty. The measures involved are H.R. 236, H.R. 674, H.R. 2167, H.R. 3100, H.R. 5195, H.R. 10979, H.R. 10980, H. Con. Res. 144, and H. Con. Res. 385.

I have read with interest your recent statements on amnesty and it would be of great value to the Subcommittee if they could have the benefit of your views on this subject. Hearings are scheduled for the morning of March 7 and the entire day of March 8. Although I would prefer to receive your testimony at 10:00 a.m. on March 8, I would be pleased to hear from you at your convenience on either of these days.

I would greatly appreciate it if you could give me a call if you are able to testify before us.

Sincerely yours,

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, Administration of Justice.

WASHINGTON, D.C., *February 22, 1974.*

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Judiciary Committee, House of Representatives, Washington, D.C.

DEAR BOB: Many thanks for your letter of February 20th and for your kind invitation to me to present testimony on the subject of amnesty before your Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

I am very sorry that my schedule is already full on March 7th and 8th and I will not be able to testify. I am, however, enclosing a copy of my letter to Commander Ray R. Soden, Veterans of Foreign Wars. This letter accurately portrays my position on the subject of amnesty and you are welcome to use it.

With best wishes and kindest personal regards, I am

Sincerely,

MELVIN R. LAIRD.

THE WHITE HOUSE, *Washington, January 28, 1974.*

Comdr. RAY R. SODEN,
Veterans of Foreign Wars of the United States, Washington Memorial Building, Washington, D.C.

DEAR COMMANDER: I received a copy of your letter to the President on amnesty and would like to comment.

As a member of the Veterans of Foreign Wars, I share with you, Commander, a great pride in our nation's strength and freedom. As part of our heritage of freedom, we have always cherished the redemptive quality of our system of justice.

As you know, during my tenure as Secretary of Defense, I felt strongly that it was completely inappropriate, unwise and unjust to consider granting any form of amnesty. I felt that while brave Americans were fighting and dying in battle any consideration of granting amnesty was unwarranted and would have had an adverse effect on the morale of our Armed Forces. My feelings at that time were identical whether the amnesty being discussed by some was "conditional" or "general." I did make known, however, that looking beyond Vietnam we were studying various reports and studies on the complex question of amnesty.

On my departure from the Department of Defense, circumstances had changed markedly. No longer were American troops fighting and dying in combat anywhere in the world. As a result of changed conditions, my views with respect to considering the question of amnesty have also changed.

Throughout my career of public service, I have learned to avoid absolute, dogmatic positions. Neither the political system nor the judicial system of the United States works on "blanket" and arbitrary approaches. Both recognize the vital roles of (1) circumstances and (2) motivation in determining political or judicial solutions to our problems. As I have said, we pride ourselves on administering justice with mercy and understanding.

With respect to the question of a "blanket" or "general" amnesty, let me emphasize that I am now and always have been opposed to a sweeping general grant of amnesty. However, there are individual cases where the circumstances require that justice provide for what some have termed "conditional amnesty." I do not like this term and only use it for lack of a better description of an equitable approach to this difficult problem. It is my view that circumstance and motivation on a case-by-case basis, under our concept of justice, must be taken into account today when dealing with violators of our selective service laws. It is noteworthy that only a small percentage of these men have thus far been prosecuted by the Department of Justice, and in these cases widely differing penalties have been assigned to individuals varying by jurisdiction.

I hope these comments will allay some of your understandable concerns. As you know, I have nothing but a profound sense of respect and gratitude to the men and women who served in Vietnam, 56,244 of whom gave their lives in the service of our country. It is a lasting source of pride to me that I had the opportunity and privilege to associate with such fine Americans and their families. I have never committed any act, nor would I, which would be a "breach of faith" with these men and women.

Finally, I am grateful to the Veterans of Foreign Wars and to the Ladies Auxiliary for their steadfast support of our defense effort, and especially for your steadfast support during my service as Secretary of Defense. I trust, and am sure, that you will continue to extend that support to the President and to his defense policy in the cause of strength and peace.

Sincerely,

MELVIN R. LAIRD,
Counsellor to the President
for Domestic Affairs.

Mr. KASTENMEIER. You may proceed.

Senator TAFT. Thank you. Mr. Chairman and members of the subcommittee, not only do I commend Mr. Laird's approach to this problem, but I also endorse the concept of alternative service that is suggested in his correspondence. I have thought the concept of alternative service to be the most equitable solution to this issue for some time, and on December 14, 1971, I introduced legislation in the Senate that would have established such an approach.

While no legislative action was taken on my proposal during the 92d Congress, my principal objective was achieved as considerable national discussion was generated on this issue. I believe such a discussion was helpful for the country as it focused the attention of many Americans on the practical questions that are involved when a nation makes a decision to require its young men to serve in a war.

I have again, in this Congress, introduced legislation that would have established the concept of alternative service for individuals who refused induction in the armed services.

Joining me in the introduction of this legislation, the Earned Immunity Act of 1974, S. 2832, was Senator Pell of Rhode Island, with cosponsorship to date of Senators Packwood, Biden, Haskell, and Metcalf. I note that elements of this proposal and the one I submitted

in the 92d Congress are contained in legislation pending before this subcommittee, including an almost identical approach in H.R. 13001, introduced by Congressman Robison of New York. I also note that the alternative service concept is incorporated in proposals of Congressman Koch, H.R. 674; and Congressman McCloskey, H.R. 10979 and H.R. 10980.

S. 2832, similar to proposals before this committee, would authorize individuals who violated the selective service laws between August 4, 1964, the date of the Gulf of Tonkin incident, and January 27, 1973, the date of the Paris Peace Agreement, to apply for immunity from prosecution and punishment up to 1 year after the effective date of the act. Such application would be submitted to an Immunity Review Board patterned after the procedure implemented by President Truman in 1946 after World War II.

The Board would be composed of five members appointed by the President with the advice and consent of the Senate. Of the five members, four would be nominated by the President from individuals recommended by the majority and minority leaders of the Senate, and the Speaker and minority leader of the House. The duration of the Board would be for 4 years with the President appointing the chairman.

The Board would be authorized to only review violations of the Military Selective Service Act and would be empowered to grant immunity upon the completion of alternative service of up to 2 years in the Armed Forces or in public or private service contributing to the national health, safety, or welfare.

Individuals serving prison sentences for crimes unrelated to selective service violations would not be eligible for such immunity, nor would individuals under indictment for any offense unrelated to the act. Examples of contemplated public service would be 2 years in the Peace Corps or VISTA with compensation at a level to provide a standard of living comparable to service in the Armed Forces at the lowest pay grade. The Board would not be permitted to deny immunity to any qualified individual and would be given discretion as to the length of alternative service, not to exceed the 2-year requirement. Each individual case would be reviewed on its own merits with the Board specifically authorized to consider mitigating circumstances with regard to the length of service required.

First, the Board could consider inaccurate interpretation of the act by an individual at the time he committed the violation. Second, the Board could consider circumstances where the applicant could have qualified for classification as a conscientious objector under the decisions of the U.S. Supreme Court prevailing on January 27, 1973.

To illustrate, the Supreme Court during the Indochina period gradually broadened its definition of conscientious objections with the case of *Welsh* v. *United States*, 398 U.S. 333, decided on June 15, 1970, introducing a significant change in the law. Before that decision, individuals seeking conscientious objector status had to raise their objection in relation to their belief in a Supreme Being. The Supreme Court in the *Welsh* case ruled that a belief in a Supreme Being was no longer required, and that other deep-felt personal views could suffice.

Obvious inequities became evident. For example, in one family, two brothers might have held the same deep-felt opposition to war not based on religious convictions. The elder son, who became draft eligible before the *Welsh* decision, could not have been classified as a conscientious objector and might have gone to prison or into exile. His younger brother, holding exactly the same views on war, could have become a conscientious objector. He would not be a criminal, and could be lawfully serving his country in alternative service.

Third, the Board could consider circumstances where an applicant's immediate family was in desperate need of his personal presence for which no other substitute could be found, and such need was not of the applicant's own making.

Fourth, consideration by the Board could be given to the fact that the applicant demonstrates a lack of mental capacity which might have rendered his acts less than willful. It is entirely possible that there are groups of men of low mental capacity who, through peer pressure or otherwise, took action which, upon full examination, provides a basis for mitigation of the length of service.

Fifth, the Board could consider whether the applicant has in the past, or is currently, subject to judicial sanctions for committing offenses for which he seeks immunity.

Sixth, the Board would be empowered to consider such other circumstances as would be consistent with these I have already enumerated. My proposal, however, specifically forbids reduction of the maximum term of service for those individuals whose sole motivating factor was selective opposition to the Vietnam war. Such individuals, while not disqualified from securing immunity, cannot use that factor as the basis for any reduction in the term, since it has never been a basis for a similar action by any of the draft regulations. On this point I would refer the subcommittee to *Gillette* v. *United States*, 401 U.S. 437, decided in 1971 by the Supreme Court.

As I have outlined, the concept of alternative service that I have proposed specifically excludes deserters. I recognize the apparent inequities that this approach may raise on a cursory examination of this issue. Upon protracted reflection, however, I have concluded that it would be unwise to include such individuals in the alternative service concept, as deserters are covered by an entirely different legal system that is inextricably intertwined with considerations of military discipline. Individuals who deserted from military service, particularly those who left functioning combat units, had a far more disruptive impact on our Nation's defense posture than individuals who refused induction. Statistics brought to my attention by the Department of Defense suggest that less than 5 percent of the individuals who deserted during the Vietnam conflict did so for ideological opposition to the war, and as to individuals in this category great flexibility was administered to constructively resolve individual cases. That is not to suggest, however, that perhaps the subcommittee should not further examine this area as there may be inequities that have not been satisfactorily resolved.

The other broad objection pertains to the concept of alternative service itself. Why not a blanket amnesty? Such an approach, in my

opinion, is too broad and would include individuals who did not have deep moral convictions against war. Former Truman Board Member James F. O'Neil's statement to this subcommittee makes this point very succinctly. I would caution, however, that the Truman Board procedures certainly could be improved upon.

Further, as I stated at the outset of my statement, I do not believe this issue should, or can, be resolved on the question as to correctness of U.S. military involvement in Southeast Asia. The Military Selective Service Act was in effect at the time of the Vietnam conflict, and that fact cannot be ignored, no matter how strong one may object to the premises upon which it is based. The proper role I would suggest for any individual who opposes a law is to use every legitimate peaceful means at his disposal to change it and, if his efforts are unsuccessful, be prepared to make a choice from the alternatives that he is then faced with. To simply state that any individual is above the law because of deep-felt views of principle, is to suggest a society without any order or meaning. The concept of alternative service is not punitive. It is offered in a positive context; for example, service in VISTA or the Peace Corps. I would emphasize that no individual would be forced to make such a commitment to serve, it would be an individual's own choice. Such service would be consistent with the legal obligation that resisters are faced with and, in essence, would simply provide another alternative to permit that obligation to be fulfilled.

Mr. Chairman, before concluding my statement, I would like briefly to comment on two issues which have been raised in the hearings to date.

First, I noted with interest testimony that rejected not only unconditional amnesty, but also the concept of alternative service. The general premise of this testimony, as I understand it, is that individuals who have violated the Military Selective Service Act or deserted must be required to pay a criminal penalty for violating the law. I would sugegst to this subcommittee that a large percentage of such individuals have in the past been offered an alternative other than a criminal penalty. Many deserters have been permitted to rejoin their units with only a reprimand. Resisters have not been prosecuted if they agree to enlist in the armed services. These approaches had been the policy of the Justice and Defense Departments before the expiration of the draft. I quote from a response I received in November of last year from Assistant Attorney General Petersen in this regard. He states as follows:

> It was our policy to allow such a man, in the absence of aggravating circumstances, to remove his delinquency under the Military Selective Service Act by submitting to induction processing and to authorize the dismissal of his indictment upon successful completion of induction. That policy was terminated on July 1, 1973, because of the expiration of the induction authority on that date.
>
> In our view, that policy was beneficial to all concerned for the reason that the inductee would render valuable service to our country for a period of twenty-four months and he would have the satisfaction of having fulfilled his service obligations. On the other hand, men convicted and sentenced for violation of the Act performed no worthwhile service of any kind and, in most instances, were permitted to return to their normal way of life in a considerably shorter period of time. For example, in fiscal year 1972, the average term of imprisonment

imposed for draft law violations was 36.2 months; however, the average actual time served in custody was 9.1 months. Moreover, 1,178 of the 1,643 defendants convicted were placed on probation by the courts, with the result that less than one-third of the men convicted ever received a prison sentence.

Subsequently to July 1, 1973, it was our policy to inform a draft delinquent prior to indictment that he was in violation of the law and prosecutive action against him was contemplated unless he were willing to correct his delinquency by enlisting in the United States Army. In that event, consideration would then be given to permitting him to purge his violation without being subjected to criminal charges. That policy has been abandoned, however, because the Department of Defense advised us that it would not accept for enlistment men who are in violation of the draft law, whether under indictment or not. We were recently informed that the enlistment policy was reconsidered, at our request, within the Department of Defense and by the Secretary of Defense, but it was concluded that it should continue in effect.

Since that decision could place a substantial prosecutive burden on the United States Attorneys throughout the country, as they no longer have a viable alternative to offer the defendants other than prosecution, we are again asking the Department of Defense to reconsider this matter.

Unfortunately, as Mr. Petersen states, the Department of Defense has refused to continue such a policy, but the point is that alternatives other than criminal sanctions have been a part of this country's policy and the concept of alternative service is not a new or radical approach, especially when supplemented with the conscientious objection alternatives already contained in the law. In the general context of Justice Department policy on this issue, it is also interesting to note the last paragraph I quoted of Mr. Petersen's letter pertaining to the burden of prosecuting draft resisters throughout the country. Statistics from the 1973 Semiannual Report of the Director of the Administrative Office of the U.S. Courts would indicate that this burden on the Justice Department has been translated into a very uneven approach of prosecution with the determining factor quite often being the geographical region of the country that an individual is from as to the disposition of the case. For example, during fiscal year 1972, only 1 of Ohio's 218 defendants in selective service cases served a prison sentence compared to Minnesota with 94 convictions, 47 of which resulted in imprisonment, out of a total of 141 defendants.

Mr. Chairman, I ask that the correspondence on this issue with the Departments of Justice and Defense regarding Government policy toward draft resisters be printed in the hearing records.

Mr. KASTENMEIER. Without objection, they will be received.

[The documents referred to follow:]

DEPARTMENT OF JUSTICE,
Washington, November 9, 1973.

Senator ROBERT TAFT, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in reply to your letter of October 24, 1973, to Acting Attorney General Robert H. Bork regarding the Department's policy to permit draft evaders to enter the Armed Forces in lieu of prosecution.

It was our policy to allow such a man, in the absence of aggravating circumstances, to remove his delinquency under the Military Selective Service Act by submitting to induction processing and to authorize the dismissal of his indictment upon successful completion of induction. That policy was terminated on July 1, 1973, because of the expiration of the induction authority on that date.

In our view, that policy was beneficial to all concerned for the reason that the inductee would render valuable service to our country for a period of twenty-

four months and he would have the satisfaction of having fulfilled his service obligations. On the other hand, men convicted and sentenced for violation of the Act performed no worthwhile service of any kind and, in most instances, were permitted to return to their normal way of life in a considerably shorter period of time. For example, in fiscal year 1972, the average term of imprisonment imposed for draft law violations was 36.2 months; however, the average actual time served in custody was 9.1 months. Moreover 1,178 of the 1,643 defendants convicted were placed on probation by the courts, with the result that less than one-third of the men convicted received a prison sentence.

Subsequent to July 1, 1973, it was our policy to inform a draft delinquent prior to indictment that he was in violation of the law and prosecutive action against him was contemplated unless he were willing to correct his delinquency by enlisting in the United States Army. In that event, consideration would then be given to permitting him to purge his violation without being subjected to criminal charges. That policy has been abandoned, however, because the Department of Defense advised us that it would not accept for enlistment men who are in violation of the draft law, whether under indictment or not.

We were recently informed that the enlistment policy was reconsidered, at our request, within the Department of Defense and by the Secretary of Defense but it was concluded that it should continue in effect. Since that decision could place a substantial prosecutive burden on United States Attorneys throughout the country, as they no longer have a viable alternative to offer the defendants other than prosecution, we are again asking the Department of Defense to reconsider this matter.

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General.

OCTOBER 24, 1973

Hon. ROBERT H. BORK,
Acting Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. BORK: Recent reports have come to my attention that the Department of Defense has rejected the Justice Department's proposals to permit individuals in violation of the Selective Service Act to volunteer for service in the Armed Forces in lieu of prosecution.

The concept of service in the Armed Forces would appear to be better for the Nation than prison sentences, and, as I understand past practices, individuals facing indictment under the Selective Service Act have been permitted to undertake service without being subject to criminal sanctions. I would appreciate a clarification of the current and past Department of Justice policy on this issue and projections for the future disposition of this matter.

With every good wish.

Sincerely,

ROBERT TAFT, Jr.,
U.S. Senator.

OCTOBER 24, 1973.

Hon. JAMES R. SCHLESINGER,
Secretary of Defense, The Pentagon,
Washington, D.C.

DEAR MR. SECRETARY: Recent reports have come to my attention that the Department of Defense has rejected the Justice Department's proposals to permit individuals in violation of the Selective Service Act to volunteer for service in the Armed Forces in lieu of prosecution.

The concept of service in the Armed Forces would appear to be better for the Nation than prison sentences, and, as I understand past practices, individuals facing indictment under the Selective Service Act have been permitted to undertake service without being subject to criminal sanctions. I would appreciate a clarification of the current and past Department of Defense policy on this issue and projections for the future disposition of this issue.

With every good wish.

Sincerely,

ROBERT TAFT, Jr.,
U.S. Senator.

31-658 O - 74 - 24

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., November 2, 1973.

Hon. ROBERT TAFT, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TAFT: This is in response to your letter to Secretary Schlesinger of October 24, 1973, requesting clarification of Department of Defense policy relative to the voluntary enlistment of persons who are under indictment or investigation for alleged violation of the Selective Service Act.

It has long been the policy of the Department of Defense to preclude the voluntary *enlistment* of persons under indictment for a criminal offense, including violations of the Selective Service Act. During periods when draft authority was exercised by the President, the military services accepted for induction those registrants who reported pursuant to orders issued by the Selective Service System without regard to arrangements which may have been made between the individual concerned and U.S. Attorneys relative to possible prior offenses.

In anticipation of the termination of induction authority and at the request of Assistant Attorney General Henry Petersen, the Department of Defense twice requested that the Military Departments reconsider their policy and permit the enlistment of persons in lieu of prosecution or indictment for Selective Service Act violations. The Service Secretaries considered and reaffirmed their position adamantly on both occasions. Secretary Schlesinger personally considered the issue in August of this year and reaffirmed the present policy.

The Selective Service System (including the penalties for violations) was intended to provide manpower for the Armed Forces, and motivation for military service was not a primary consideration. Induction of alleged violators in lieu of prosecution was not inconsistent with that policy. That concept of our armed forces has been completely revised, however, and proper motivation for service is now fundamental to the success of the all-volunteer force. The individual who enlists under the coercive threat of prosecution is not a real volunteer and does not truly desire to be a professional soldier, sailor, airman, or marine. Because he is not properly motivated to become an effective member of the armed forces, the forced volunteer has a high potential for difficulties in the service.

The Military Services unanimously oppose the enlistment of these men because it violates the all-volunteer concept and implicitly condones the action of draft evaders. Such a policy smacks of equating military service with penal servitude. The Department of Defense has previously solicited Department of Justice cooperation in terminating the practice of permitting any youthful offender to enlist in the military to avoid criminal prosecution irrespective of the nature of the offense involved. The absolute eradication of the "enlist or jail" option is a matter of considerable concern to the Department of Defense in our efforts to ensure a highly motivated all-volunteer Armed Force and to bolster and renew public confidence in military service as a thoroughly respectable and honorable profession.

The Department of Defense is equally concerned that a relaxation of this exclusionary policy for Selective Service Act violators would establish a thoroughly undesirable precedent which offers inductees in any future conflict the option to avoid service until peace is restored. There is no way to equate service in peacetime with service in armed conflict. The proposal is fundamentally unfair to the two and one-half million men and women who performed their service during a period of conflict and, in particular, to over 350,000 maimed and wounded and over 45,000 who gave their lives. This precedent would dangerously impair the effectiveness of any future induction system.

The Department of Justice has terminated the practice of offering an enlistment alternative to individuals already under indictment for Selective Service Act violations. It is my understanding, however, that U.S. Attorneys are continuing to make the option available in cases which remain in the pre-indictment stage. This situation is the subject of current discussions between the Departments. In the absence of a satisfactory accommodation, military recruiters will continue to reject enlistments which are known to be motivated by an offer to forego indictment or prosecution.

It is hoped that the foregoing information will be of assistance to you. Your interest in this matter is appreciated.

Sincerely,

LEO E. BENADE,
Lieutenant General, USA,
Deputy Assistant Secretary of Defense.

Senator TAFT. I also ask that a chart from the 1973 semiannual report of the Director of the Administrative Office of the United States Courts showing the disposition of defendants charged with Selective Service Act violations be printed in the hearing record.

Mr. KASTENMEIER. Without objection, that will be done also.

[The document referred to follows:]

UNITED STATES DISTRICT COURTS

DISPOSITION OF DEFENDANTS CHARGED WITH SELECTIVE SERVICE ACT VIOLATIONS
SHOWING TYPE OF SENTENCE, BY DISTRICT, FISCAL YEAR 1972

Circuit and district	Total defendants	Not Convicted					Convicted and Sentenced				Type of Sentence									Average sentence of imprisonment (months)*
		Total	N.A.R.A*	Dismissed	Acquitted by: Court	Acquitted by: Jury	Total	Plea of guilty or nolo contendere	Convicted by: Court	Convicted by: Jury	Imprisonment: Total	Split sentence	1 year and 1 day and under	Over 1 year 1 day to 3 years	1-5 years	5 years and over	Probation	Fine only	Other	
Total.....	4,910	1,267	1	2,939	294	33	1,643	935	578	130	459	146	53	121	123	16	1,178	4	2	22.1
District of Columbia.....	4	3	-	3	-	-	1	1	-	-	1	-	-	1	-	-	-	-	-	-
90 Districts....	4,906	1,264	1	2,936	294	33	1,642	934	578	130	458	146	53	120	123	16	1,178	4	2	22.0
First Circuit..	148	111	1	101	7	2	37	16	13	8	13	1	1	9	2	-	22	2	-	-
Maine.....	49	39	-	38	1	-	10	4	4	2	1	-	-	1	-	-	7	2	-	-
Massachusetts....	59	43	-	40	2	1	16	8	5	3	7	1	1	3	2	-	9	-	-	-
New Hampshire....	22	16	1	11	4	-	6	3	2	1	1	-	-	1	-	-	5	-	-	-
Rhode Island.....	4	1	-	1	-	-	3	-	2	1	3	-	-	3	-	-	-	-	-	-
Puerto Rico.....	14	12	-	11	-	1	2	1	-	1	1	-	-	1	-	-	1	-	-	-
Second Circuit..	335	251	-	237	11	3	84	62	11	11	20	3	6	5	6	-	64	-	-	-
Connecticut.....	27	26	-	26	-	-	1	1	-	-	1	-	-	1	-	-	-	-	-	-
New York:																				
Northern.....	32	27	-	25	-	2	5	4	-	1	-	-	-	-	-	-	5	-	-	-
Eastern.....	48	36	-	35	1	-	12	11	1	-	4	2	-	-	2	-	8	-	-	-
Southern.....	184	139	-	129	9	1	45	32	9	4	15	1	6	4	4	-	30	-	-	-
Western.....	42	21	-	21	1	-	20	13	1	6	-	-	-	-	-	-	20	-	-	-
Vermont.....	2	1	-	1	-	-	1	1	-	-	-	-	-	-	-	-	1	-	-	-
Third Circuit...	350	240	-	220	18	2	110	70	27	13	22	3	3	9	6	1	88	-	-	-
Delaware.....	2	1	-	1	-	-	1	-	1	-	-	-	-	-	-	-	1	-	-	-
New Jersey.....	67	44	-	41	2	1	23	19	1	3	1	-	1	-	-	-	22	-	-	-
Pennsylvania:																				
Eastern.....	196	135	-	120	14	1	61	38	15	10	14	2	-	9	3	-	47	-	-	-
Middle.....	35	25	-	25	-	-	10	8	2	-	2	-	2	-	-	-	8	-	-	-
Western.....	50	35	-	33	2	-	15	7	8	-	5	1	-	-	3	1	10	-	-	-
Fourth Circuit..	253	167	-	153	12	2	86	49	29	8	44	2	1	8	32	1	42	-	-	38.7

Maryland.....	60	41	-	42	1	-	17	13	3	1	5	1	1	-	3	-	12	-	-	-	
North Carolina:																					
Eastern.....	65	43	-	37	4	2	22	15	6	1	19	1	-	1*	16	1	3	-	-	-	
Middle.....	7	2	-	2	-	-	5	3	2	-	1	-	-	1	-	-	4	-	-	-	
Western.....	24	14	-	12	2	-	10	5	5	-	-	-	-	-	-	-	10	-	-	-	
South Carolina...	14	6	-	5	1	-	8	7	-	1	1	-	-	1	-	-	7	-	-	-	
Virginia:																					
Eastern.....	62	46	-	43	3	-	16	3	10	3	13	-	-	3	10	-	3	-	-	-	
Western.....	6	3	-	2	1	-	3	1	2	-	2	-	-	-	2	-	1	-	-	-	
West Virginia:																					
Northern.....	5	5	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Southern.....	16	5	-	5	-	-	5	2	1	2	3	-	-	2	1	-	2	-	-	-	
Fifth Circuit...	328	224	-	214	8	2	104	77	12	15	33	1	-	17	14	1	71	-	-	31.3	
Alabama:																					
Northern.....	16	4	-	4	-	-	12	12	-	-	1	-	-	1	-	-	11	-	-	-	
Middle.....	20	12	-	12	-	-	8	5	2	1	3	-	-	2	1	-	5	-	-	-	
Southern.....	3	3	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Florida:																					
Northern.....	13	6	-	6	-	-	7	4	2	1	5	-	-	1	3	1	2	-	-	-	
Middle.....	44	31	-	30	1	-	13	12	1	-	5	-	-	5	-	-	8	-	-	-	
Southern.....	49	41	-	40	-	1	8	6	-	2	1	-	-	1	-	-	7	-	-	-	
Georgia:																					
Northern.....	27	20	-	17	2	1	7	7	-	-	2	1	-	-	1	-	5	-	-	-	
Middle.....	5	2	-	2	-	-	3	-	-	3	3	-	-	1	2	-	-	-	-	-	
Southern.....	15	10	-	9	1	-	5	3	-	2	-	-	-	-	-	-	5	-	-	-	
Louisiana:																					
Eastern.....	21	16	-	16	-	-	5	4	-	1	1	-	-	-	1	-	4	-	-	-	
Middle.....	5	5	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Western.....	15	11	-	10	1	-	4	2	1	1	-	-	-	-	-	-	4	-	-	-	
Mississippi:																					
Northern.....	3	1	-	1	-	-	2	1	1	-	2	-	-	1	1	-	-	-	-	-	
Southern.....	4	4	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Texas:																					
Northern.....	17	11	-	10	1	-	6	5	1	-	3	-	-	2	1	-	3	-	-	-	
Eastern.....	9	6	-	6	-	-	3	3	-	-	-	-	-	-	-	-	3	-	-	-	
Southern.....	21	17	-	16	1	-	4	-	2	2	1	-	-	1	-	-	3	-	-	-	
Western.....	41	24	-	23	1	-	17	13	2	2	6	-	-	2	4	-	11	-	-	-	

UNITED STATES DISTRICT COURTS

DISPOSITION OF DEFENDANTS CHARGED WITH SELECTIVE SERVICE ACT VIOLATIONS
SHOWING TYPE OF SENTENCE, BY DISTRICT, FISCAL YEAR 1972, CONCLUDED

Circuit and district	Total defendants	Not Convicted					Convicted and Sentenced				Type of Sentence									Average sentence of imprisonment (months)[4]
					Acquitted by				Convicted by			Imprisonment[1]								
		Total	N.A.R.A.[2]	Dismissed	Court	Jury	Total	Plea of guilty or nolo contendere	Court	Jury	Total	Split[3] sentence	1 year or 1 day and under	Over 1 year to 1 day to 4 years	4-5 years	5 years and over	Probation	Fine only	Other	
Sixth Circuit...	522	360	-	349	9	2	162	124	33	5	16	-	-	2	9	5	146	-	-	-
Kentucky:																				
Eastern.....	8	3	-	3	-	-	5	3	2	-	4	-	-	-	1	3	1	-	-	-
Western.....	11	8	-	8	-	-	3	2	-	1	2	-	-	-	1	1	1	-	-	-
Michigan:																				
Eastern.....	182	133	-	123	8	2	49	34	14	1	2	-	-	1	-	1	47	-	-	-
Western.....	77	36	-	36	-	-	41	38	2	1	3	-	-	1	2	-	38	-	-	-
Ohio:																				
Northern.....	155	127	-	126	1	-	28	20	6	2	1	-	-	-	1	-	27	-	-	-
Southern.....	63	40	-	40	-	-	23	22	1	-	-	-	-	-	-	-	23	-	-	-
Tennessee:																				
Eastern.....	5	4	-	4	-	-	1	1	-	-	-	-	-	-	-	-	1	-	-	-
Middle.....	12	7	-	7	-	-	5	1	4	-	-	-	-	-	-	-	5	-	-	-
Western.....	9	2	-	2	-	-	7	3	4	-	4	-	-	-	4	-	3	-	-	-
Seventh Circuit.	496	324	-	308	13	3	172	123	38	11	48	8	14	5	14	3	124	-	-	24.0
Illinois:																				
Northern.....	229	111	-	105	6	-	118	90	24	4	22	5	2	-	14	1	96	-	-	-
Eastern.....	29	28	-	26	-	-	1	1	-	-	1	-	-	-	-	1	-	-	-	-
Southern.....	38	35	-	35	-	-	3	2	-	1	1	-	-	-	1	-	2	-	-	-
Indiana:																				
Northern.....	46	37	-	35	2	-	9	7	-	2	6	1	4	-	1	-	3	-	-	-
Southern.....	56	37	-	35	1	1	19	11	6	2	7	-	-	5	2	-	12	-	-	-
Wisconsin:																				
Eastern.....	58	41	-	41	2	-	15	9	6	-	4	2	1	-	1	-	11	-	-	-
Western.....	40	33	-	29	2	2	7	3	2	2	7	-	7	-	-	-	-	-	-	-
Eighth Circuit..	479	341	-	305	35	1	138	65	58	15	56	32	7	7	10	-	82	-	-	15.1
Arkansas:																				
Eastern.....	13	4	-	4	-	-	9	8	1	-	-	-	-	-	-	-	9	-	-	-
Western.....	4	2	-	2	-	-	2	2	-	-	-	-	-	-	-	-	2	-	-	-
Iowa:																				
Northern.....	12	9	-	8	-	1	3	2	1	-	-	-	-	-	-	-	1	-	-	-
Southern.....	48	37	-	36	1	-	11	6	4	1	3	-	-	-	3	-	8	-	-	-
Minnesota.....	283	189	-	163	26	-	94	34	49	11	47	32	7	6	2	-	47	-	-	10.0

Missouri:																				
Eastern	20	18	-	16	-	-	2	1	1	-	1	-	-	1	-	-	1	-	-	-
Western	34	33	-	29	4	-	1	-	1	-	1	-	-	-	1	-	-	-	-	-
Nebraska	21	17	-	17	-	-	4	2	-	2	1	-	-	-	1	-	3	-	-	-
North Dakota	28	22	-	19	3	-	6	4	1	1	3	-	-	-	3	-	3	-	-	-
South Dakota	16	10	-	9	1	-	6	6	-	-	-	-	-	-	-	-	6	-	-	-
Ninth Circuit	1,816	1,136	-	947	176	13	680	309	340	31	182	86	21	50	22	3	495	1	2	15.2
Alaska	10	10	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Arizona	134	93	-	90	3	-	41	27	13	1	5	1	1	-	2	1	34	-	2	-
California:																				
Northern	844	539	-	420	113	6	305	104	191	10	55	12	6	33	2	2	249	1	-	18.4
Eastern	80	35	-	29	5	1	45	29	13	3	13	7	1	5	-	-	32	-	-	-
Central	463	295	-	252	39	4	168	73	85	10	51	27	2	8	14	-	117	-	-	17.1
Southern	32	20	-	18	1	1	12	9	3	-	2	-	-	-	2	-	10	-	-	-
Hawaii	4	3	-	3	-	-	1	-	1	-	1	-	-	-	1	-	-	-	-	-
Idaho	11	4	-	4	-	-	7	7	-	-	1	1	-	-	-	-	6	-	-	-
Montana	15	9	-	9	-	-	6	6	-	-	-	-	-	-	-	-	6	-	-	-
Nevada	9	8	-	7	1	-	1	1	-	-	-	-	-	-	-	-	1	-	-	-
Oregon	95	66	-	59	6	1	29	14	13	2	23	15	6	1	1	-	6	-	-	-
Washington:																				
Eastern	27	17	-	15	1	-	10	4	6	-	7	4	2	1	-	-	3	-	-	-
Western	92	37	-	30	7	-	55	35	15	5	24	19	3	2	-	-	31	-	-	-
Tenth Circuit	179	110	-	102	5	3	69	39	17	13	24	10	-	8	3	3	44	1	-	-
Colorado	91	50	-	42	5	3	41	16	15	10	17	8	-	8	-	-	23	1	-	-
Kansas	23	14	-	14	-	-	9	8	1	-	3	-	-	-	2	1	6	-	-	-
New Mexico	18	13	-	13	-	-	5	5	-	-	-	-	-	-	-	-	5	-	-	-
Oklahoma:																				
Northern	5	2	-	2	-	-	3	2	-	1	1	-	-	-	-	1	2	-	-	-
Eastern	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Western	26	21	-	21	-	-	5	3	-	2	3	1	-	-	1	1	2	-	-	-
Utah	9	3	-	3	-	-	6	5	1	-	-	-	-	-	-	-	6	-	-	-
Wyoming	7	7	-	7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

[1]Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences). [2]Defendants who were committed under 18 U.S.C. 2902 (b) of the Narcotic Addict Rehabilitation Act. [3]A split sentence is a sentence on a one-count indictment of 6 months or less in a jail-type institution followed by a term of probation. 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more counts. [4]Excludes districts where number imprisoned was 25 or less. The high average sentence in the District of Columbia reflects the use of the maximum term of indeterminate sentences imposed on defendants convicted of violations of the D. C. Criminal Code. [5]The Middle District of Louisiana was created by P.L. 92-208, approved December 18, 1971, and effective April 16, 1972. Data is presented for this new district for the entire fiscal year (1972).

Senator TAFT. Mr. Chairman, the other comment I would like to make with regard to previous statements at these hearings pertains to the statement of the Department of Justice. While it may be a close question, I respectfully must disagree with the Department's conclusion that the Congress lacks the constitutional authority to legislate in this area.

There can be no question that Congress has the constitutional authority to enact legislation permitting certain classes of individuals to obtain immunity from criminal prosecution. It is clear that, just as the President may grant reprieves and pardons to particular individuals, Congress may immunize a general class of individuals from prosecution.

For example, in 1865, Congress directed the President to issue a proclamation announcing a pardon for all deserters who returned to their posts within 60 days.

This legislative power of immunity has also been exercised numerous times where it has been considered necessary to obtain testimony in connection with criminal investigations. The responsibility to determine which persons should be granted this immunity has been placed in Federal agencies, prosecutors, and congressional committees.

Congress also has the undisputed power to modify the terms and conditions of judicial sanctions imposed on those convicted of crimes. This authority has been delegated to the Federal Board of Parole, granting that Board broad discretion in determining whether it should mitigate or alter the form of punishment imposed. I would refer the committee to title 18, sec. 4201 of the United States Code.

The authority exercised by the Board of Parole is probably the most common use of our legislative power of immunity.

The duties and powers of the Immunity Review Board that would be established by S. 2832 and its companion measures in the House would partake of all three of the foregoing examples. The Board would be empowered to deal with all members of the specified class of persons to whom the Congress has extended this conditional offer of immunity. The Board would promulgate rules and regulations, and pursuant to them, consider the merits of each individual case. Further, the Board would then offer appropriate conditions of service to each applicant, the fulfillment of which shall entitle that individual to immunity.

Mr. Chairman, I ask that a copy of the legislation I have proposed, S. 2832, and a legal memorandum prepared by my staff substantiating its constitutional validity be included in the hearing record.

Mr. KASTENMEIER. Without objection, that will be done also.

[The documents referred to follow:]

[S. 2832, 93d Cong., 1st sess.]

A BILL To provide persons who unlawfully failed to register for the draft, or who unlawfully avoided military service, with an opportunity to earn immunity from prosecution and punishment for such offenses, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Earned Immunity Act of 1974".

SEC. 2. (a) Notwithstanding any other provision of law, any person who, subsequent to August 4, 1964, and prior to January 27, 1973, unlawfully failed to register under the Military Selective Service Act or failed to comply with a lawful induction order for service in the Armed Forces of the United States may secure immunity from prosecution and punishment for offenses described in

section 12 of the Military Selective Service Act and other related offenses if such person completes the period of public service hereinafter prescribed. To be eligible for immunity under this Act, an applicant shall—

(1) present himself by individual appearance, or that of an attorney-at-law or family member to the Immunity Review Board (established pursuant to section 4(a) of this Act) no later than one year after the effective date of this Act at such place and in such manner as may be required in regulations issued pursuant to section 4(a) of this Act;

(2) enter into a written agreement with the Immunity Review Board under which the applicant agrees, in return for immunity upon completion of the full performance of the agreement, to enlist and agree to serve two years in the Armed Forces of the United States, or up to two years in such alternative service, public or private, contributing to the national health, safety, or welfare as may be approved by the Immunity Review Board, including, but not limited to, service in Public Health Service hospitals, VISTA, and the Peace Corps, except as such term may be otherwise decreased by the Board pursuant to section 4; and

(3) agree to compensation for such period adequate to provide a standard of living reasonably comparable to that which the same man would have enjoyed if he entered the Armed Forces of the United States at the lowest pay grade without promotion and otherwise comply with such regulations as to compensation as are promulgated by the Immunity Review Board established pursuant to section 4(a) of this Act.

(b) During the term of any agreement entered into by any person pursuant to subsection (a)(2), the United States shall withhold any administrative or judicial action to prosecute such person for any violation of any law referred to in such agreement, and any applicable statute of limitations shall be tolled during the period such agreement is in effect.

(c) The willful failure of any person to comply with any term of an agreement entered into under this Act shall constitute grounds for termination of such agreement by the United States. Such termination of the agreement shall void any conditional grant of immunity made under this Act, but any evidence accumulated by or submitted to said Immunity Review Board shall not be released to any governmental agency.

SEC. 3. Any person otherwise eligible for immunity under this Act who is under indictment, who has been convicted, or who is serving a prison sentence arising out of conduct described in section 2 of this Act shall be eligible to earn immunity hereunder, including the revocation of any judgment of conviction, termination, or suspension of any action upon any indictment heretofore entered; but any person subject to the Uniform Code of Military Justice (chapter 47 of title 10, United States Code) shall not be entitled to earn immunity from the sentence or other punishment imposed by any military court under such Code.

SEC. 4. (a) There is hereby established a board which shall be known as the Immunity Review Board (hereinafter referred to as the "Board"). The Board shall be empowered to execute such agreements necessary to effectuate the purposes of this Act and to determine the length of service, if any, required hereunder to earn immunity in accordance with individual circumstances. The Board shall be empowered to issue rules and regulations to effectuate the congressional intent manifested herein and such rules and regulations shall be promulgated in accordance with chapter 5 of title 5, United States Code.

(b) The Board shall be composed of five members appointed by the President, with the advice and consent of the Senate, four of whom shall be appointed as follows:

(1) One member shall be appointed from among individuals recommended by the majority leader of the Senate.

(2) One member shall be appointed from among individuals recommended by the Speaker of the House of Representatives.

(3) One member shall be appointed from among individuals recommended by the Minority Leader of the Senate.

(4) One member shall be appointed from among individuals recommended by the Minority Leader of the House of Representatives.

A vacancy on the Board shall be filled in the manner in which the original recommendation was made. Members shall be appointed for the life of the Board.

(c) Members of the Board shall each be entitled to receive an annual salary and reimbursement for expenses equal to the annual salary and expenses payable to a United States district court judge.

(d) Three members of the Board shall constitute a quorum. The Chairman of the Board shall be selected by the President from among members of the Board.

(e) The Board shall have power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title.

(f) Each department, agency, and instrumentality of the executive branch of the government, including independent agencies, is authorized and directed to furnish to the Board, upon request made by the Chairman, such information as the Board deems necessary to carry out its functions under this Act.

SEC. 5. (a) The Board shall designate one or more of its members to study each application filed with it under this Act and such member or members shall make a recommendation to the full Board. Prior to the final decision by such Board, the applicants must be timely furnished with a written copy of such recommendations and shall have the opportunity to submit, in accordance with regulations and procedures established by the Board, any additional statements he deems appropriate. The decision of a majority of the Board determining the period needed to earn immunity shall be a final determination not subject to judicial review in any form, notwithstanding any other provision of law.

(b) The Board shall determine the length of alternative service to be included in any agreement consummated in accordance with section 2 of this Act when the applicant demonstrates to the satisfaction of the Board that:

(1) At the time the applicant performed the acts for which he now seeks imunity he was erroneously convinced by himself or others that he was not then or would not be in violation of the Military Selective Service Act by his action;

(2) The applicant could have qualified for classification as a conscientious objector under the decisions of the United States Supreme Court prevailing at the end of the time period set forth in section 2(a);

(3) A member of the applicant's immediate family is now in desperate need of his personal presence for which no other substitute could be found, and such need was not of his own creation;

(4) The applicant demonstrates a lack of mental capacity which might have rendered his acts less than willful;

(5) The applicant has been in the past, or is currently, subject to judicial sanctions for committing offenses for which he seeks immunity; or

(6) Such other circumstances as are consistent with the principles expressed herein.

(c) Nothing in subsection (b) of this section shall authorize the decrease in term of service solely because of selective opposition to United States military actions in Southeast Asia, it being the sense of Congress that the full terms of service required by section 2(a) shall be required to earn immunity from prosecution or punishment under such circumstances.

(d) Any assignment of alternative service pursuant to this Act shall not interfere with the competitive job market by assigning a person in a capacity for which there are other qualified applicants not subject to this Act, nor shall assignments of alternative service pursuant to this Act be permitted to prejudice in any manner the employment opportunities for individuals who have served in the Armed Forces of the United States.

SEC. 6. This Act shall not apply in the case of any person otherwise eligible for immunity if such person (1) is serving a prison sentence for an offense not described in section 2 of this Act or is scheduled to serve, immediately after completion of his sentence for an offense described in section 2 of this Act, a prison term for any other offense for which he has been convicted, or (2) is under indictment for any offense for which immunity may not be granted under this Act.

SEC. 7. All references in this Act to the Military Selective Service Act shall be deemed to include reference to prior corresponding Acts and other statutes of the United States whose applicability depend upon the activities for which the applicant seeks immunity under this Act from prosecution or punishment under an agreement by and between applicant and the Board.

SEC. 8. The Board shall cease to exist four years after the effective date of this Act.

SEC. 9. The provisions of this Act shall not be construed as an attempt to affect in any way the power of the President under section 2 of Article II of the Constitution to grant reprieves and pardons for any offense referred to in section 2 of this Act.

SEC. 10. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) The Board shall reimburse any department or agency of the Government for the salary and other incidental expenses incurred by such department or agency in utilizing the services of persons assigned to perform alternative service under this Act.

SEC. 11. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 12. This Act shall become effective 60 days after date of enactment.

"THE EARNED IMMUNITY ACT OF 1974": SECTION-BY-SECTION ANALYSIS BY SENATOR ROBERT TAFT, JR.

I. PURPOSES OF THE ACT

A. Introduction

On January 27, 1973, the United States of America entered upon a new era in its relationship to the hostilities in Indochina. At that time, as a result of extensive negotiations, a series of agreements was entered into which has enabled the United States to repatriate its prisoners of war in that area and fulfill its pledge to bring about a cease-fire and peace. Because of these conditions, it is now appropriate to reconsider the situation of those persons who have failed to register for selective service, failed to comply with a lawful induction order, or otherwise disregarded the duties placed upon them with respect to reporting for military service.[1]

B. Those persons who have evaded prosecution for selective service violations should be granted immunity upon the completion of a contractual obligation for compensatory personal service

In the 92nd Congress, I introduced Senate Bill 3011, which addressed itself to this problem in a preliminary manner. As I had hoped, it provoked considerable discussion and I hope the country has benefited from the many comments, both pro and con, which have been made about my original bill. I am particularly grateful for the thoughtful and serious comments which have been made in a series of law review articles.[2]

As a result of the discussions which Senator Pell and myself, together with our staffs, have held, we now feel that we are in a position to suggest to the Senate the "Earned Immunity Act of 1974" which embodies, we believe, a responsible resolution of the inherent conflict between the demand for total amnesty and the demand for total punishment. We subscribe to neither end and believe our bill reflects that commitment.

The purpose of the legislation, as stated in the purpose clause, is to offer the opportunity to men falling within the class to *earn* immunity from prosecution and punishment under the Military Selective Service Act. As is set forth in Section 2(a) of our bill, only those persons who took unlawful actions under that Act between August 4, 1964, and January 27, 1973, are eligible to seek immunity from prosecution and punishment. Furthermore, such immunity arises only upon the completion by such individual of the terms of a written agreement which such applicant undertakes with the United States. Under that written agreement, the applicant would, in return for immunity upon completion of full performance, agree to enlist and serve for up to 2 years in the Armed Forces or up to two years in alternative service, public or private, contributing to the national health, safety or welfare.

Footnotes at end of article.

II. ANALYSIS

A. The Immunity Review Board

1. The immunity Review Board shall determine the conditions by which each each applicant shall obtain immunity

This Act contemplates the creation of an "Immunity Review Board," which we have deliberately modeled as an analogy to a board utilized by President Truman.[3] Sections 2(a) and 3 of the Act set forth the general call of persons eligible for immunity, and the general conditions prerequisite to obtaining said grant. Section 4(a) establishes the Board, and delegates to it the authority to determine, on a case by case basis, the conditions which each applicant must fulfill in order to gain immunity. Section 3 permits individuals currently subject to judicial sanctions for violations of the Selective Service Act to similarly obtain immunity through the Board from the further imposition of sanctions.

2. Congress is empowered to create the Immunity Review Board and delegate to it the authority to grant immunity

There can be no question that Congress has the Constitutional authority to enact legislation permitting certain classes of individuals to obtain immunity from criminal prosecution. It is clear that, just as the President may grant reprieves and pardons to particular individuals,[4] Congress may immunize a general class of individuals from prosecution.[5] For example, in 1865, Congress directed the President to issue a proclamation announcing a pardon for all deserters who returned to their posts within sixty days.[6]

This legislative power of immunity has also been exercised numerous times where it has been considered necessary to obtain testimony in connection with criminal investigations.[7] The responsibility to determine which persons should be granted this immunity has variously been placed in federal agencies, prosecutors, and Congressional committees.[8]

Congress also has the undisputed power to modify the terms and conditions of judicial sanctions imposed on those convicted of crimes. This authortiy has been delegated to the Federal Board of Parole, granting that Board broad discretion in determining whether it should mitigate or alter the form of punishment imposed.[9] The authority exercised by the Board of Parole is probably the most common use of our legislative power of immunity.

The duties and powers of the Immunity Review Board partake of all three of the foregoing examples. This Board is empowered to deal with all members of the specified class of persons to whom Congress has extended this conditional offer of immunity. The Board shall promulgate rules and regulations, and pursuant to them consider the merits of each individual case. The Board shall then offer appropriate conditions of service to each applicant, the fulfillment of which shall entitle that individual to immunity.

B. The Board shall utilize the grounds set forth in the Act in determining the appropriate length of service

Section 5 of the Act sets forth the grounds which we believe the Immunity Review Board should consider in determining the appropriate length of service the Immunity Review Board might consider in mitigation is that of a person required for an applicant to gain immunity. One example of the grounds that who thought he would have been required to perform military service but, in fact, he would not have. The usefulness of the Immunity Review Board in this context would be that each person would have the opportunity to present his individual case before the terms of the agreement would be fixed.

The second ground for consideration by the Immunity Review Board deals with the possibility that the applicant could have secured classification as a conscientious objector. The United States Supreme Court, throughout the Indochina period, gradually broadened its definition of conscientious objector. As a result, one who applied in 1972 could have secured that classification, whereas the same individual, applying in 1964, could not have.[10] We have no illusions about the difficulties involved in administering a procedure which takes into account changing judicial standards. Nevertheless, it is our feeling that any person who could have qualified as a conscientious objector on January 27, 1973 should be permitted to have that fact considered in judging the length of time

Footnotes at end of article.

he would be required to serve under his agreement in order to secure immunity from violation of law. It may be appropriate at this point to mention that we do not believe that it is possible to instruct the Immunity Review Board on how much weight to give to any one particular factor. This does not result from any desire on our part to delegate our legislative function, but, instead, it demonstrates our belief that the confusion and controversy surrounding this matter requires a qualified and thorough analysis. To that end, the legislation instructs the Immunity Review Board, in Section 4(a), to issue rules and regulations in accordance with the Administrative Procedure Act to effectuate these purposes.[11] We would anticipate that the Immunity Review Board would give serious consideration to the Congressional criteria and would establish rules based upon their experience and review.

The third ground set up by our legislation is the existence of an overwhelming need for the personal presence of the applicant with his family. We can conceive of situations where such need results from illness in the family where the person should be released immediately from any further obligation to earn the immunity. However, it is not inconceivable that the Immunity Review Board could afford a deferred contractual obligation in appropriate cases.

The fourth Congressional criterium set forth in our legislation deals with the problem of lack of mental capacity at the time of the alleged unlawful activity. It is entirely possible that there are groups of men of low mental capacity who, through peer pressure or otherwise, took action which, upon full examination, provides a basis for mitigation of the length of service.

The fifth ground provides for those persons who are presently being punished for Selective Service Act offenses. Such persons who have already served time in prisons or periods of probation and/or parole may apply to the Board for immunity from further such treatment. The Board should take this past punishment into account when fashioning the terms of agreements in these cases.

Also, it is deliberately left open to the Immunity Review Board to develop other grounds for consideration as are consistent with the principles embodied in the Act.

Finally, we believe it is appropriate to include a criterium which, when applicable, conclusively forbids reduction of the maximum term of service. Those individuals whose sole motivating factors was selective opposition to the Vietnam War, while not disqualified from securing immunity, cannot use that factor as the basis for any reduction in the term, since that has never been a basis for a similar action by any of the draft regulations.[12]

C. The actions of the Immunity Review Board shall not be judicially reviewable

The Act explicitly provides that the decisions of the Immunity Review Board as to term of service proposed shall be final and not subject to judicial review. This investiture of unreviewable power, under analysis, is neither arbitrary nor unwarranted.

The Board is a Congressional mechanism to insure that a person entitled to immunity can gain it through conditions appropriate to his individual case. The Act sets forth relevant criteria for this determination, and confides total discretion to the Board in applying those criteria to the myriad of relevant facts. This exercise of discretion, as delegated to the Board by Congress, should not be the subject of judicial inquiry. It is analogous to the power of the Executive Department, which is charged with the faithful execution of the law, to determine whether or not to institute prosecution in a particular case. The leading opinion is that written by now Chief Justice Berger in the case of *Newman v. United States*, 382 F.2d 479 (C.A. D.C. 1967). In the *Newman* case the United States Attorney determined not to accept a plea from one of two co-defendants. The argument was made that this conduct denied due process and equal protection. Mr. Justice Berger held that this was a matter of first impression and that it had to be resolved on the basis of the constitutional division of power. As Chief Justice Berger stated,

"Few subjects are less adapted to judicial review than the exercise . . . of . . . discretion in deciding when and whether to institute criminal proceedings, or what precise charge should be made, or whether to dismiss a proceeding once brought." (382 F.2d at p. 480).

Footnotes at end of article.

The Chief Justice, speaking for a unanimous panel, concluded that "no court has any jurisdiction to inquire into or review his decision." *Id.* at 482. In an earlier decision, the Court of Appeals for the Fifth Circuit, speaking *en banc*, held that:

"The courts are not to interfere with the free exercise of the discretionary powers of the Attorneys of the United States in their control over criminal prosecutions. *United States v. Cox*, 342 F.2d 167, 171 (5th Cir.), *cert. den.*, 85 S.Ct., 1767 (1965).

The powers to be exercised by the Board are dramatically similar to that of federal prosecutors. The factors to be considered in each case are so numerous and subtle as not to be susceptible of judicial evaluation and weighing. The analogy shown here leads inescapably to the conclusion that judicial review of these decisions be precluded.

A second example of unreviewable discretion also warrants attention. The Federal Board of Parole provides a striking model of the future tasks of the Immunity Review Board. Similar factors must be weighed by each board in reaching a decision. The courts have long since recognized Congress granted the Board of Parole "absolute discretion" in the grant or denial of parole.[13] In the face of this discretion, judicial review is necessarily precluded.

In the absence of evidence of flagrant, unwarranted, or unauthorized action by the Board, it is not the function of the courts to review such proceedings. *Scarpa*[14] *v. U.S. Board of Parole*, 477 F.2d at 283.

The *Scarpa* court enunciated the principle behind this viewpoint: the government may, in its unreviewable discretion, confer a benefit on an individual or refuse to change an individual's status to the better; on the other hand, where a cognizable benefit is withdrawn, the courts will examine that action to insure the presence of due process.[15] The Immunity Board of Review will confer a benefit, a reduction in service, when it finds it appropriate. The Board need not be reviewed as to the merits of its decisions.

D. Limitations of the scope of the Act

First of all, it does not apply to anyone serving a prison sentence for crimes unrelated to selective service violations. Furthermore, it is not applicable to those persons who have deserted from the United States Armed Forces. We believe that the problems of these latter individuals are so inextricably intertwined with the considerations of military discipline that a comprehensive solution for that category of persons is beyond the proper scope of this legislation.

III. CONCLUSION

The legislative power of immunity has been little exercised in the context of military service. The reasons for this prior dormancy are varied, but sometimes readily apparent—as where action had been taken by the Executive branch, in each of the country's previous conflicts so as to make Congressional action unnecessary.

Moreover, there is some evidence that an informal type of "amnesty" has been administered on a haphazard basis throughout the United States by the various United States Attorneys. It is widely believed that a lesser sentence may be secured by prosecution in one part of the country;[16] and it is well known that the Justice Department has been less than diligent in pursuing the violations of the various acts involved. An important advantage to having an Immunity Review Board would be that of uniformity; the same considerations would be applicable to all persons who sought immunity from prosecution and, although no one would be compelled to seek immunity, it is anticipated by us that the existence of an alternative uniform procedure would cut down or eliminate the apparently discriminatory practices which are now in existence throughout the country.

We fully recognize the limitations inherent in our legislation, and we hope to provoke a further discussion of this matter with the goal that this acrimonious problem may be resolved in a manner which would benefit not only the individuals involved but the country as a whole. We believe that the time is ripe to move on this issue and that the Congress of the United States should not deny itself the opportunity to consider fully the very serious questions raised by this matter.

Footnotes at end of article.

FOOTNOTES

[1] The exact number of such persons is in dispute. Our staff analysis, as of the summer of 1973, estimated that at least 18,500 individuals were abroad because of resistance to the draft. As of July 23, 1973, the Department of Justice reported that another 1,351 persons were indicted and awaiting trial and 300 men were imprisoned. The number of persons living "underground" in the United States is very difficult to ascertain, but the most conservative estimates place that figure at several thousand. In sum, the number of persons within the scope of this legislation quite probably exceeds 30,000.

[2] The first bill I introduced on December 14, 1971, was S. 3011. It was referred to the Committee on the Judiciary. The Sub-committee on Administrative Practice and Procedure held hearings on "Selective Service System Procedures and Administrative Possibilities for Amnesty" on February 28, 29, and March 1, 1972 (hereinafter referred to as "Hearings"). The Hearings have been printed by the United States Government Printing Office and comprise 671 pages with considerable amount of source materials incorporated therein. In addition, S. 3011 has been the subject of discussion in a number of law review articles written on the topic. They include the following: Jones and Raish, "American Deserters and Draft Evaders: Exile, Punishment or Amnesty?", 13 Harvard International Law Journal 88 (Winter 1972) (printed verbatim in the Hearings at pages 450–478); Roth and Rothman, "The Authority of a Congress to Grant Amnesty," Yale Legislative Services (1972) (printed at pages 490–501 of the Hearings); Comment, "A History and Discussion of Amnesty," 4 Columbia Human Rights Law Review 529 (Fall 1972); Comment, "Draft Resisters in Exile: Prospects and Risks of Return," 7 Columbia Journal of Law and Social Problems 1 (Winter 1971); Lusky, "Congressional Amnesty for War Resisters: Policy Considerations and Constitutional Problems," 25 Vanderbilt Law Review 525 (April 1972); Migliore, "Amnesty: An Historical Justification for its Continuing Viability," 12 Journal of Family Law 63 (1972–73).

[3] Under Article II, Section 2, Clause 1, the President has the power to ". . . grant reprieves and pardons for offenses against the United States. . . ." There have been numerous examples of the use of this power over the years and they are discussed thoroughly in the various law review articles. President Truman, before exercising that power, created an "Amnesty Board" composed of three members who examined and considered the cases of persons who had already been convicted of violations of the Selective Service Law during World War II. Executive Order 9814, 11 Federal Register 14645 (December 23, 1946). The Amnesty Board was composed of Owen Roberts, Willis Smith, and James F. O'Neil, and they submitted their report to the President exactly one year later, December 23, 1947. That report is printed verbatim at pages 485–489 of the Hearings. As is stated therein, after reviewing 15,805 convictions, the Board recommended that 1,523 persons be granted executive clemency.

[4] U.S. Const. Art. II, § 2; *Ex parte Garland*, 71 U.S. (4 Wall) 333, 380 (1866). Also see Humpert, *The Pardoning Power of the President* 40 (1941).

[5] In *Brown v. Walker*, the United States Supreme Court acknowledged that the power of reprieve and pardon expressly granted the President in no way affected the general authority residing in the legislative branch. 161 U.S. 591, 40 L. Ed. 819, 822 (1896). See also the *Laurg*, 114 U.S. 411 (1884).

[6] Act of March 3, 1865, 13 Stat. 190–91. For a similar exercise of legislative pardon, see Act of July 17, 1862, 12 Stat. 592.

[7] E.g., 27 Stat. 443 (1893), 49 U.S.C.A. § 46 (1969), constitutionality upheld, *Brown v. Walker*, supra; 32 Stat. 904 (1903), 15 U.S.C.A. § 32, 49 U.S.C.A. § 47 (1969), constitutionality upheld, *Hale v. Henkel*, 201 U.S. 43 (1906). Such statutes have "become part of our constitutional fabric." *Ullman v. United States*, 350 U.S. 422, 438 (1956). *See also* Comment, *The Federal Witness Immunity Acts in Theory and Practice: Treading The Constitutional Tightrope*, 72 Yale L.J., 1568 (1963).

[8] See, for example, the "use" immunity provisions of the Organized Crime Control Act of 1970, 18 U.S.C.A. § 6001–05 (Supp. 1973). See also *Kastigar v. United States*, 406 U.S. 441 (1972), upholding these provisions.

[9] 18 U.S.C.A. § 4201 et seq. (1969). "By the language of [this statute], the Board of Parole is given absolute discretion in matters of parole." *Scarpa v. U.S. Board of Parole*, 477 F. 2d 278, 280 (5th Cir. 1973); *accord. Hyser v. Reed*, 318 F. 2d 225 (D.C. Cir. 1963) (*per* Berger, J.).

[10] *Compare, George v. United States*, 196 F. 2d 445 (9th Cir.), *cert. den.*, 344 U.S. 843 (1952), *with United States v. Seegar*, 380 U.S. 163 (1965) *and Welsh v. United States*, 398 U.S. 333 (1970).

[11] In issuing rules, the Board is directed to utilize the procedures set forth in 5 U.S.C.A. § 551 *et seq.*; however, the Board is in no way subject to the other provisions of the Administrative Procedure Act.

[12] This conclusion is in accord with the Supreme Court's interpretation of the conscientious objector clause in *Gilette v. United States*, 401 U.S. 437 (1971).

[13] *Scarpa v. U.S. Board of Parole*, 477 F. 2d 278, 280 (5th Cir. 1973); *accord., Hyser v. Reed*, 318 F. 2d 225 (D.C. Cir. 1963).

[14] *Accord, Menenchio v. Oswald*, 430 F. 2d 403, 408–09 (2d Cir. 1970), *cert. den.*, 400 U.S. 1023 (1971); *Dorado v. Kerr*, 454 F. 2d 892 (9th Cir. 1972).

[15] 477 F. 2d 278, 282. *Compare, Morrissey v. Brewer*, 408 U.S. 471 (1972) (revocation of parole).

[16] In fiscal year 1972 certain district courts reported widely disparate results:

Minnesota—94 convicted; 47 subsequently imprisoned (50.0%);
Washington—65 convicted; 31 subsequently imprisoned (47.7%);
California (Cent. Dist.)—168 convicted; 51 subsequently imprisoned (30.4%);
California (Nor. Dist.)—305 convicted; 55 subsequently imprisoned (18.0%);
Michigan—90 convicted; 5 subsequently imprisoned (5.5%).

Source of data: 1973 Semi-annual Report of the Director of the Administrative Office of the United States Courts, Fig. 24.

It has often been rumored among draft resistor groups that Northern California was the most lenient district. The above figures appear to dispute this. However, the disparity between belief and actual statistics simply underscores the need for a uniform coordinated approach.

Also see *Newsweek*, Oct. 1, 1973, "A Kind of Amnesty", p. 34.

Senator TAFT. Mr. Chairman, that concludes my statement and I will be happy to respond to any questions the subcommittee may have.

[Senator Taft's statement follows:]

STATEMENT OF SENATOR ROBERT TAFT, JR.

Mr. Chairman and members of the subcommittee, I would like to commend you for holding these hearings and thank you for permitting me to appear before the subcommittee this morning.

The application of our Nation's selective service laws during the Vietnam war confirmed a great number of the apprehensions I had regarding the desirability of the continuation of compulsory military service. As members of this subcommittee are no doubt aware, a great number of inequities developed regarding the application of these laws over the last ten years, particularly with regard to conscientious objection. Not only were legal standards changed in this area, but additionally there were significant variances in the way the military Selective Service System implemented throughout the country. Unfortunately, even with negotiation of the Paris peace agreement on January 27, 1973, and the successful transition to the concept of an All-Volunteer Army, many inequities and problems remain with regard to individuals who refused induction into the Armed Forces, or decided to unilaterally withdraw from service after induction. To date, however, almost with unanimity, any discussion directed toward consideration of the plight of such individuals becomes entangled in emotional debate as to the propriety of United States military involvement in Southeast Asia.

I submit to this subcommittee that the issue to be considered is not whether draft resisters were right or wrong, nor whether the United States should have become involved in the Vietnam conflict. Enough bitterness has already been generated in the discussion of these issues. Rather, consideration should be given to the issue of establishment of a practical method whereby an estimated 30,000 individuals could return to this country or cease to be fugitives without creating further divisions among Americans. Understandably, there will be controversy generated by groups with inflexible positions on this issue, no matter what policy is pursued, but I am of the opinion that a sizeable majority of citizens of this country will support constructive action by the Congress and/or the President on this subject. Particulaly, those of us who are elected officials, I believe, must be responsive to problems that have been created in this area—these problems simply will not disappear, no matter how much many of our colleagues in the Congrss or officials in the executive branch may wish they would. In this regard, I would like to quote from a letter that Melvin Laird sent to Commander Ray R. Soden, Veterans of Foreign Wars of the United States, regarding the question of amnesty:

"Throughout my career of public service, I have learned to avoid absolute, dogmatic positions. Neither the political system nor the judicial system of the United States works on "blanket" and arbitrary approaches. Both recognize the vital roles of (1) circumstances and (2) motivation in determining political or judicial solutions to our problems. As I have stated, we pride ourselves on administering justice with mercy and understanding."

Mr. Laird goes on to state, and I quote:

"With respect to the question of a "blanket" or "general" amnesty, let me emphasize that I am now and always have been opposed to a sweeping general grant of amnesty. However, there are individual cases where the circumstances require that justice provide for what some have termed "conditional amnesty." I do not like this term and only use it for lack of a better description of an equitable approach to this difficult problem. It is my view that circumstance and motivation on a case-by-case basis, under our concept of justice, must be taken into account today when dealing with violators of our selective service laws. It is noteworthy that only a small percentage of these men have thus far been prosecuted by the Department of Justice, and in these cases widely differing penalties have been assigned to individuals varying by jurisdiction."

Mr. Chairman, I would ask to have this correspondence that Mr. Laird has shared with me printed in its entirety in the hearing record as an appendix to my statement.

Mr. Chairman and members of the subcommittee, not only do I commend Mr. Laird's approach to this problem, but I also endorse the concept of alternative service that is suggested in his correspondence. I have thought the concept of

alternative service to be the most equitable solution to this issue for some time and on December 14, 1971, introduced legislation in the Senate that would have established such an approach. While no legislative action was taken on my proposal during the 92nd Congress, my principal objective was achieved as considerable national discussion was generated on this issue. I believe such a discussion was helpful for the country as it focused the attention of many Americans on the practical questions that are involved when a nation makes a decision to require its young men to serve in a war.

I have again this Congress introduced legislation that would establish the concept of alternative service for individuals who refused induction in the Armed Services. Joining me in the introduction of this legislation, the Earned Immunity Act of 1974, S. 2832, was Senator Pell of Rhode Island with cosponsorship of Senators Packwood, Biden, Haskell and Metcalf. I note that elements of this proposal and the one I submitted in the 92nd Congress are contained in legislation pending before this subcommittee, including an almost identical approach, H.R. 13001, introduced by Congressman Robison of New York. I would note the alternative service proposals of Congressman Koch and Congressman McCloskey. (H.R. 674, Koch and H.R. 10979 and H.R. 10980, McCloskey.)

S. 2832, similar to proposals before this committee, would authorize individuals who violated the selective service laws between August 4, 1964, the date of the Gulf of Tonkin incident, and January 27, 1973, the date of the Paris peace agreement, to apply for immunity from prosecution and punishment up to one year after the effective date of the act. Such application would be submitted to an Immunity Review Board patterned after the procedure implemented by President Truman in 1946 after World War II. This Board would be composed of five members appointed by the President with the advice and consent of the Senate. Of the five members, four would be nominated by the President from individuals recommended by the majority and minority leaders of the Senate and the Speaker and minority leader of the House. The duration of the Board would be for four years with the President appointing the chairman.

The Board would be authorized to only review violations of the Military Selective Service Act and would be empowered to grant immunity upon the completion of alternative service of up to two years in the Armed Forces or in public or private service contributing to the national health, safety or welfare. Individuals serving prison sentences for crimes unrelated to selective service violations would not be eligible for such immunity, nor would individuals under indictment for any offense unrelated to the act. Examples of contemplated public service would be two years in the Peace Corps or VISTA with compensation at a level to provide a standard of living comparable to service in the Armed Forces at the lowest pay grade. The Board would not be permitted to deny immunity to any qualified individual and would be given discretion as to the length of alternative service, not to exceed the two years required. Each individual case would be reviewed on its own merits with the Board specifically authorized to consider mitigating circumstances with regard to the service requirement.

First, the Board could consider inaccurate interpretation of the act by an individual at the time he committed the violation. Second, the Board could consider circumstances where the applicant could have qualified for classification as a conscientious objector under the decisions of the United States Supreme Court prevailing on January 27, 1973.

To illustrate, the Supreme Court during the Indochina period gradually broadened its definition of conscientious objections with the case of *Welsh* v. *United States*, 398 U.S. 333, decided on June 15, 1970, introducing a significant change in the law. Before that decision, individuals seeking conscientious objector status had to raise their objection in relation to their belief in a Supreme Being. The Supreme Court in *Welsh* ruled that a belief in a Supreme Being was no longer required, and that other deep felt personal views could suffice. Obvious inequities became evident. For example, in one family, two brothers might have held the same deep felt opposition to war not based on religious convictions. The elder son, who became draft eligible before the *Welsh* decision, could not have been classified as a conscientious objector and might have gone to prison or into exile. His younger brother, holding exactly the same views on war, could have become a conscientious objector. He would not be a criminal, and could be lawfully serving his country in alternative service.

Third, the Board could consider circumstances where an applicant's immediate family was in desperate need of his personal presence for which no other substitute could be found, and such need was not of the applicant's own making.

31-658 O - 74 - 25

Fourth, consideration by the Board could be given to the fact that the applicant demonstrates a lack of mental capacity which might have rendered his acts less than willful. It is entirely possible that there are groups of men of low mental capacity who, through peer pressure or otherwise, took action which, upon full examination, provides a basis for mitigation of the length of service.

Fifth, the Board could consider whether the applicant has in the past, or is currently, subject to judicial sanctions for committing offenses for which he seeks immunity.

Sixth, the Board would be empowered to consider such other circumstances as would be consistent with these I have already enumerated. My proposal, however, specifically forbids reduction of the maximum term of service to those individuals whose sole motivating factor was selective opposition to the Vietnam war. Such individuals, while not disqualified from securing immunity, cannot use that factor as the basis for any reduction in the term, since it has never been a basis for a similar action by any of the draft regulations. On this point I would refer the subcommittee to *Gillette* v. *United States*, 401 U.S. 437, decided in 1971.

As I have outlined, the concept of alternative service that I have proposed specifically excludes deserters. I recognize the apparent inequities that this approach may raise on a cursory examination of this issue. Upon protracted reflection, however, I have concluded that it would be unwise to include such individuals in the alternative service concept, as deserters are covered by an entirely different legal system that is inextricably intertwined with considerations of military descipline. Individuals who deserted from military service, particularly those who left functioning combat units, had a far more disruptive impact on our Nation's defense posture than individuals who refused induction. Statistics brought to my attention by the Department of Defense suggest that less than five percent of the individuals who deserted during the Vietnam conflict did so for ideological opposition to the war and as to individuals in this category great flexibility was administered to constructively resolve individual cases that is not to suggest that perhaps the subcommittee should not further examine this area as there may be inequities that have not been satisfactorily resolved.

The other broad objection pertains to the concept of alternative service itself. Why not a blanket amnesty? Such an approach in my opinion is too broad and would include individuals who did not have deep moral convictions against war. Former Truman Board member James F. O'Neil's statement to this subcommittee makes this point very succinctly. I would caution, however, that the Truman Board procedures certainly could be improved upon. Further, as I stated at the outset of my statement, I do not believe this issue should, or can, be resolved on the question as to correctness of United States military involvement in Southeast Asia. The military Selective Service Act was in effect at the time of the Vietnam conflict and that fact cannot be ignored, no matter how strong one may object to the premises upon which it is based. The proper role I would suggest for any individual who opposes a law is to use every legitimate peaceful means at his disposal to change it and, if his efforts are unsuccessful, be prepared to make a choice from the alternatives that he is then faced with. To simply state that any individual is above the law because of deep-felt views of principle, is to suggest a society without any order or meaning. The concept of alternative service is not punitive. It is offered a positive context, for example, service in VISTA or the Peace Corps. I would emphasize that no individual would be forced to make such a commitment to serve, it would be an individual's own choice. Such service would be consistent with the legal obligation that resisters are faced with and, in essence, would simply provide another alternative to permit that obligation to be fulfilled.

Mr. Chairman, before concluding my statement, I would like briefly to comment to two issues which have been raised in the hearings to date.

First, I noted with interest testimony that rejected not only unconditional amnesty, but also the concept of alternative service. The general premise of this testimony, as I understand it, is that individuals who have violated the military Selective Service Act or deserted must be required to pay a criminal penalty for violating the law. I would suggest to this subcommittee that a large percentage of such individuals have in the past been offered an alternative other than a criminal penalty. Many deserters have been permitted to rejoin their units with only a reprimand. Resisters have not been prosecuted if they agree to enlist in the Armed Services. These approaches had been the policy of the Justice and

Defense Departments before the expiration of the draft. I quote from a response I received in November of last year from Assistant Attorney General Peterson regarding this subject:

"It was our policy to allow such a man, in the absence of aggravating circumstances, to remove his delinquency under the Military Selective Service Act by submitting to induction processing and to authorize the dismissal of his indictment upon successful completion of induction. That policy was terminated on July 1, 1973, because of the expiration of the induction authority on that date.

In our view, that policy was beneficial to all concerned for the reason that the inductee would render valuable service to our country for a period of twenty-four months and he would have the satisfaction of having fulfilled his service obligations. On the other hand, men convicted and sentenced for violation of the Act performed no worthwhile service of any kind and, in most instances, were permitted to return to their normal way of life in a considerably shorter period of time. For example, in fiscal year 1972, the average term of imprisonment imposed for draft law violations was 36.2 months; however, the average actual time served in custody was 9.1 months. Moreover 1,178 of the 1,643 defendants convicted were placed on probation by the courts, with the result that less than one-third of the men convicted received a prison sentence.

Subsequent to July 1, 1973, it was our policy to inform a draft delinquent prior to indictment that he was in violation of the law and prosecutive action against him was contemplated unless he were willing to correct his delinquency by enlisting in the United States Army. In that event, consideration would then be given to permitting him to purge his violation without being subjected to criminal charges. That policy has been abandoned, however, because the Department of Defense advised us that it would not accept for enlistment men who are in violation of the draft law, whether under indictment or not. We were recently informed that the enlistment policy was reconsidered, at our request, within the Department of Defense and by the Secretary of Defense, but it was concluded that it should continue in effect. Since that decision could place a substantial prosecutive burden on United States Attorneys throughout the country, as they no longer have a viable alternative to offer the defendants other than prosecution, we are again asking the Department of Defense to reconsider this matter.

Unfortunately, as Mr. Peterson states, the Department of Defense has refused to continue such a policy, but the point is that alternatives other than criminal sanctions have been a part of this country's policy and the concept of alternative service is not a new radical approach, especially when supplemented with the conscientious objection alternatives already contained in the law. In the general context of Justice Department policy on this issue, it is also interesting to note the last paragraph I quoted of Mr. Peterson's letter pertaining to the burden of prosecuting draft resisters throughout the country. Statistics from the 1973 semi-annual report of the Director of the Administrative Office of the United States Courts would indicate that this burden on the Justice Department has been translated into a very uneven approach of prosecution with the determining fatcor quite often being the geographical region of the country that an individual is from as to the disposition of the case. For example, during F.Y. 72 only 1 of Ohio's 218 defendants in selective service cases served a prison sentence compared to Minnesota with 94 convictions (47 of which resulted in imprisonment) out of a total of 141 defendants.

Mr. Chairman, I ask that the correspondence I have had with the Department of Justice and Defense regarding Government policy toward draft resisters be printed in the hearing record as an appendix to my statement. I also ask that a chart from the 1973 semi-annual report of the Director of the Administrative Office of the United States Courts showing the disposition of defendants charged with Selective Service Act violations be printed in the hearing record as an appendix to my statement.

The other comment I would like to make with regard to previous statements at these hearings pertains to the statement of the Department of Justice. While it may be a close question, I respectfully must disagree with the Department's conclusion that the Congress lacks the constitutional authority to legislate in this area.

There can be no question that Congress has the constitutional authority to enact legislation permitting certain classes of individuals to obtain immunity from criminal prosecution. It is clear that, just as the President may grant reprieves and pardons to particular individuals, Congress may immunize a gen-

eral class of individuals from prosecution. For example, in 1865, Congres directed the President to issue a proclamation announcing a pardon for all deserters who returned to their posts within sixty days.

This legislative power of immunity has also been exercised numerous times where it has been considered necessary to obtain testimony in connection with criminal investigations. The responsibility to determine which persons should be granted this immunity has variously been placed in Federal agencies, prosecutors, and congressional committees.

Congress also has the undisputed power to modify the terms and conditions of judicial sanctions imposed on those convicted of crimes. This authority has been delegated to the Federal Board of Parole, granting that Board broad discretion in determining whether it should mitigate or alter the form of punishment imposed. I would refer the committee to title 18, sec. 4201 of the United States Code, "by language of (this statute), the Board of Parole is given absolute discretion in matters of parole." The authority exercised by the Board of Parole is probably the most common use of our legislative power of immunity.

The duties and powers of the Immunity Review Board that would be established by S. 2832 and its companion measures in the House would partake of all three of the foregoing examples. This Board would be empowered to deal with all members of the specified class of persons to whom Congress has extended this conditional offer of immunity. The Board would promulgate rules and regulations, and pursuant to them, consider the merits of each individual case. Further, the Board would then offer appropriation conditions of service to each applicant, the fulfillment of which shall entitle that individual to immunity.

Mr. Chairman, I ask that a copy of the legislation I have proposed, S. 2832, and a legal memorandum prepared by my staff substantiating its constitutional validity be included in the hearing record as an appendix to my statement.

That concludes my statement and I will be happy to respond to any questions the subcommittee may have.

Mr. KASTENMEIER. Thank you, Senator Taft.

I would like to commend you on a most excellent statement and proposal. Although I know that your proposal falls short of what those who seek unconditional amnesty would ask, nonetheless it does constitute a well thought out and a constructive step and I congratulate you for it.

I would like to discuss just one or two questions. You have selected quite carefully, apparently, the word "immunity" rather than "amnesty" or some other term. And while you did indicate in your statement that you did not particularly like the term "amnesty" or at least "conditional amnesty," I am wondering whether it was for that reason or because, as a constitutional basis, "immunity" can be better provided for by the Congress than something which may be closer to a pardon?

In other words, what was the motivating factor for selecting the word "immunity" in your legislation?

Senator TAFT. Both of those considerations were in our minds when we decided to make this change. Senator Pell and I discussed this issue at some considerable length.

I think that the word "amnesty" has invoked in the minds of many individuals the concept of absolute amnesty.

Our intent is to provide for conditional service. The prior legislation that we introduced, did use the word "amnesty" and it seemed to invoke a reaction from people that no matter how much we explained the requirement of alternative service, the general reaction was that we had proposed an unconditional amnesty.

Mr. KASTENMEIER. On Friday we received evidence of large numbers of people who are adversely affected in one way or another in terms of class.

Principally, your approach affects these who are guilty of selective service violations. How many individuals would be affected by your legislation if enacted, Senator Taft?

Senator TAFT. Our staff analysis, as of the summer of 1973, estimated that at least 18,500 individuals were out of the country due to resistance to the draft. It is difficult to tell how many of those might be deserters.

The Canadian Embassy just recently provided us with a cumulative figure for the first 9 months of 1973, of 15,598 men who are in Canada either because they were or thought they were in violation of selective service law or were deserters.

Of course, the most difficult number to ascertain is the number who are in this country. Facts or figures are not available for this group.

Our best estimate for resisters remains around the 30,000 figure.

Mr. KASTENMEIER. Those 30,000 are both here and abroad and they presumably would come forward and comply?

Senator TAFT. I would think some of them would.

Mr. KASTENMEIER. Of those who would, some would fall within the guidelines for positive determination by the Immunity Board, and some would not?

Senator TAFT. No; that is not correct. Our feeling is if they are in violation of the selective service law, regardless of the reason for being in violation, they would be eligible for alternative service. The period of service in individual cases would be based upon the circumstances of individual cases and could be reduced by the Immunity Review Board.

Mr. KASTENMEIER. I see.

Senator TAFT. The mitigating circumstances I have outlined in my statement would be applicable with regard to reduction of service.

Mr. KASTENMEIER. This is a difficult question and it is a question of political judgment. Do you think that the Congress would pass a bill dealing with either some form of conditional amnesty or immunity, or unconditional amnesty?

Senator TAFT. I do not think an unconditional amnesty bill would be adopted. I am not sure of the particular type of legislation that we have proposed.

It seems to me that there would have to be a good deal of an educational process on this issue and I commend this committee because I think that by having these hearings further public congressional understanding will be promoted.

Mr. KASTENMEIER. Thank you. The gentleman from New York, Mr. Smith.

Mr. SMITH. Senator Taft, I too want to welcome you here this morning as one of the witnesses in regard to this question, which I think our country must review and make some decisions about.

I think, as I remember it, you were one of the early congressional sponsors of proposed legislation in this field?

Senator TAFT. That is correct, in December of 1971. The proposal I introduced was the first alternative service proposal in the Congress.

Mr. SMITH. And unless I am mistaken, I think, Senator, your original proposal called for a minimum—I think it was for 3 years of alternative service as a requirement for anyone who is to get earned immunity. Is that correct?

Senator TAFT. That is correct, Mr. Smith.

Mr. SMITH. And you have now decided apparently that the maximum of 2 years would satisfy the requirements—well, not the requirements of the selective service law of course but perhaps the requirements of conscience?

Senator TAFT. Yes; there were a number of factors that led to that decision.

I would say that one of the ones that weighed most heavily in arriving at that decision was the factual situation with regard to those who have been convicted in violation of the draft law and the penalties imposed upon them. In a great number of these, individuals are not going to prison, and in cases where imprisonment is imposed the average is about 9 months.

We felt in balancing that factor off against alternative service, a reduction in the term of service would be equitable.

Mr. SMITH. As I understand your proposal, the Review Board would review each individual case but would allow immunity with alternative service only if the individual applying was in fact, or should have been, recognized as a legitimate conscientious objector under the selective service law?

Senator TAFT. No; I would like to correct that impression. Any draft evader who came in and availed himself of the provisions of this proposal after it becomes law, would be entitled to immunity if he agreed to a period of service.

Mr. SMITH. Even if he were a selective conscientious objector against this particular war?

Senator TAFT. Yes; no matter what the situation was he would still be entitled to the alternative service. However, if certain mitigating conditions were involved which are described in the bill, the Immunity Review Board could reduce the period of service. It specifically could not take into consideration selective objection to the Vietnam war in reducing the 2-year period of service.

Mr. SMITH. But a person who was a draft evader because of his selective objection to this Vietnam service, he could still apply for such immunity, and with a 2-year period of volunteer service, get it?

Senator TAFT. That is correct. If he qualified on any of the other bases provided for in the law in which there could be a reduction in that period, then he could still qualify for reduction of the period.

Mr. SMITH. For instance, if he were a selective conscientious objector to the Vietnam war and he had a very difficult family condition that required his presence, that latter one would be a grounds upon which the Board could reduce the 2 years?

Senator TAFT. That is correct.

Mr. SMITH. Thank you, very much.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, very much, Senator Taft, and I commend you for taking the leadership in this area.

I am somewhat troubled by the underlying philosophy of S. 2832. You yourself enunciated it on page 2—that you want to, if at all possible, forget everything that has transpired.

I can understand how you want to do that, but I'm not certain that the underlying policy shouldn't be faced up to and that it can just be pushed into the background.

Additionally, let me ask you some specific questions about the bill.

Can the Board created by the legislation reduce the time of alternate service to zero or to 10 minutes?

Senator TAFT. Yes, the Board could eliminate the service requirement if the circumstances warranted.

Mr. DRINAN. Is that entirely clear in the bill itself?

Senator TAFT. Yes, I think so.

Mr. DRINAN. Like Mr. Smith, I had trouble in this regard, with the exclusion of selective conscientious objectors. I can see your reasoning here. But once again this goes back to the central question. These people thought that the war was in fact a mistake or immoral, then you are saying in effect that we should ignore that and they should still get the 2 years. And you propose no reduction.

Now, do you think the *Gillette* case was decided correctly that there is no selective conscientious objection?

Senator TAFT. Yes.

Mr. DRINAN. All church bodies in this country say it was wrongly decided, and there should be a provision in the law to that effect. It may be that Congress would have to supplement the law.

Would you vote for a law that gives immunity to selective conscientious objectors?

Senator TAFT. No, I do not believe I could support that approach.

Mr. DRINAN. Why?

Senator TAFT. I do not believe a Selective Service System based on that principle could work. I would say that I have long been one who has advocated a voluntary Army and have opposed selective service as such, unless in a case of absolute national necessity.

If is becomes necessary to have a Selective Service System, you cannot have an effective procedure with a selective objection to a particular war.

Mr. DRINAN. Very few actually in all of America's history have tried to opt out. But Senator, would you say that by refusing to vote for a bill that extends conscientious objection to selective objectors, you are in effect giving a preference to people who think by reason of their religious convictions or parallel convictions that all wars are wrong?

Senator TAFT. No, I think that is up to the Immunity Review Board. That certainly is a factor they can consider.

Mr. DRINAN. But the present law gives a preference to Quakers and others who think that all war is wrong, does it not?

Senator TAFT. Any individual with objection to violence or war in general would be qualified.

Mr. DRINAN. Well, they must believe that all wars are wrong and not merely one war is wrong, and that is a particular religious doctrine.

Senator TAFT. I think you have gone beyond what the *Gillette* case says. My understanding is that the case takes a position that regardless of your religious belief, that if you were against all wars and against violence, that you may bring this forth and qualify for conscientious objection.

Mr. DRINAN. All right, but there are bills filed in the Congress in both bodies that would overrule the *Gillette* case. And it seems to me we cannot continue to say that only those opposed morally to all wars should get this immunity.

On one other point, Senator, at page 8 you cite Department of Defense statistics which allege that less than 5 percent of the deserters had ideological differences with the Vietnam war. Is there any careful study by the Department of Defense on this rather crucial point?

Senator TAFT. The Defense Department has made studies. Now, whether they are adequate or not, I do not know. I have not gone into great detail on this issue because we were not dealing with the deserter question.

Mr. DRINAN. I know they are not within this particular legislation.

Senator TAFT. Right.

Mr. DRINAN. But is it really true, as you state on page 10, that a large percentage of such individuals have in the past been offered an alternative other than a criminal penalty; that they have been given the opportunity to come back into the military service?

Senator TAFT. Over the years, that is correct. As I indicated, it is not true now.

Mr. DRINAN. You suggest that they haven't been treated that badly, but they never get the GI bill, and they get a dishonorable, or less than honorable, discharge if they do return.

Senator TAFT. That is not true as a general rule.

Mr. DRINAN. It depends on who takes them back, of course, and what he reports, but I have cases of quite a few constituents who have gone back after they were AWOL. They went back thinking that all of that has been rectified, but then they end up with a less than honorable discharge.

Senator TAFT. Let me comment for a moment there for the benefit of the committee generally. I think the committee in its investigations and study might properly go into the question of deserters and of the provisions of the Uniform Code of Military Justice relating to deserters. This question, however, involves different policy considerations than those involved with resisters.

Mr. DRINAN. On page 12 you stated the Department of Defense policy of refusing to accept enlistment of men who are in violation of the draft law, whether under indictment or not.

Refusing to take someone even though the indictment against him has been dismissed, is that illegal in your judgment?

Can the Department of Defense refuse to take a person who volunteers for the military after the indictment has been dismissed?

Senator TAFT. I think it is an open legal question. The voluntary Army concept would obviously permit flexibility. I do not think you can discriminate against an individual, however, who has had an indictment dismissed.

Mr. DRINAN. We might have a case of somebody trying to volunteer for the military and asserting he has the right to be accepted. It would be an unusual case I think.

Senator Taft, I welcome your comments that the Department of Justice was wrong here on Friday and I would hope that you will bring your influence to bear upon former Senator Saxbe who is now the distinguished Attorney General. I'm sure that your views will carry a good deal of weight with your former Ohio Senator because I'm afraid we gave the Department of Justice a rather bad time the other day.

On one last point, Senator, dealing with earned immunity. I have a little trouble with that euphonism. Those people who have earned immunity, would they get the GI bill and housing benefits and the right to go to VA hospitals under your legislation?

Senator TAFT. No.

Mr. DRINAN. That is categorical in your opinion?

Senator TAFT. Yes.

Mr. DRINAN. I have no other questions.

Mr. KASTENMEIER. Mr. Mezvinsky?

Mr. MEZVINSKY. I too want to thank the Senator. I was interested in his comments in response to the chairman as to the educational process that may have to be set in motion in order for us to try to pass any kind of legislation. I also want to make it clear, and I think I understood it, that without question you disagree with Justice Department's position as to the prerogative of Congress to act in this area, is that right?

Senator TAFT. Very definitely, yes.

Mr. MEZVINSKY. There is only one issue I would like to discuss. You have stated this morning that conditional immunity is not punitive, but those that testified Friday came out with a different interpretation. Would you care to elaborate as to why conditional immunity would not be punitive or a kind of servitude for those that would find themselves coming under the guidelines of your particular piece of legislation?

Senator TAFT. I suppose it is perhaps overstated in saying it is not punitive in any sense. It is true that the individual agrees to serve voluntarily without any pressure. However, there is a period of service required and any service I suppose, if it is required because the man had violated the law might still be considered as punitive. I did not feel it was in writing the statement, but I recognize there is a requirement of service in order to qualify. However, the man makes the choice himself as to whether or not to avail himself of the provisions of the bill.

Mr. MEZVINSKY. Thank you, Senator. I appreciate your contribution to this most difficult area. Thank you.

Mr. KASTENMEIER. May I ask one more question. On page 13 of your statement you alluded to the uneven approach of prosecution by region citing the case of Ohio and of Minnesota. Since this subcommittee is also concerned with courts and the administration of justice, I wonder if you know why this discrimination exists in the particular case you cited?

Senator TAFT. I do not know. I think it is a matter of the case load and investigatory load and the general attitudes in the particular judicial districts around the country. I think it does point out an area that is very important and that Judiciary Committees, both House and Senate, should look into it because I think that nothing could undermine the entire legal system more than to have forum shopping insofar as this type of case is concerned.

Mr. KASTENMEIER. This subcommittee will look into that. It will be very interesting.

One other final question. In your judgment do you think that as time passes the country is more willing to accept some sort of initiative to mitigate the problem that gives rise to these hearings?

Senator TAFT. Yes. Let me say, however, that I interpret the reaction of the country as coming from an increased understanding of the fact that there is an alternative service requirement in these projections. I do not know that the country's attitude has particulary changed on the question of absolute immunity. I detect there still is a rather heavy majority against unconditional amnesty.

When I first made my proposal in December of 1971, there was a poll taken by Newsweek magazine that indicated a majority of the country was in favor of granting immunity with a condition of a period of public service.

I think it is more a matter of getting the word through as to what you are thinking of doing than it is perhaps any basic change in attitude.

Mr. KASTENMEIER. Thank you, Senator Taft. You have been very helpful this morning and we appreciate it.

Senator TAFT. Thank you.

Mr. KASTENMEIER. Do you have another question?

Mr. DRINAN. One point, Senator. Going back to the question that you say your bill specifically excludes deserters. In a certain sense the argument is loaded, is it not, by using the term "deserter"?

Senator TAFT. Yes.

Mr. DRINAN. There are many people who are morally late bloomers. They got into the service and then realized the consequences of their action. There is very limited machinery, sometimes no machinery, for them to leave the service with permission.

And you simply put them into a category as "deserters." Do you think that that loads the discussion?

Senator TAFT. It may and I would say this. That issue and that word is not used in any way in the legislation that we are talking about here. It is just an easy reference to those who are not covered under this bill, who are accused of some violation in connection with their duties in the military. Actually a deserter is one under the military definitions currently used, as I understand it, and used throughout this period, who is AWOL for more than 30 days. If someone is AWOL for more than 30 days they are classified by the armed services as a deserter and may be tried if charges are preferred on that basis.

We made an inquiry a couple of years ago in that regard as to the numbers we are talking about and received a figure for a 5-year period during the Vietnam conflict that there were as many as 350,000 who fitted in that particular category. However, all but some 30,000 had been processed one way or another. And I presume that quite a few thousand more have been processed in the meantime. I do not have the up-to-date figures.

Mr. DRINAN. Senator, as you know there were several thousand individuals in that category who protested against the war, that did not want to go and there was no real way for them to have their day in court. I recall that I became involved, before I was a Congressman, with an individual who had that particular moral problem. I went all the way to the Secretary of the Navy—he was in the Marines—and it came down to the fact that he was going to be court-martialed in the next week and he was going to use his conscientious objection as a selective conscientious objector as a Roman Catholic and so the

Secretary of the Navy gave him a disposition. But not everyone has lawyers from the American Civil Liberties Union, and there are hundreds of thousands of people who will get no relief under your bill.

You say there is an apparent injustice, but is there not a real inequity, too?

Senator TAFT. I think there may well be inequity. There is inequity in any military situation, no question about it.

I mention in my statement that this is an area that I think the committee might well want to examine.

Mr. DRINAN. Thank you very much. I hope again you work on Mr. Saxbe. Republicans from Ohio always agree on things.

Senator TAFT. Not always.

Mr. KASTENMEIER. The committee expresses its appreciation to you, Senator Taft.

It is a privilege for the Chair to greet a very distinguished public servant from my part of the country, from the State of Wisconsin. He is the former Secretary of the Army and now president of the Sentry Corp., Robert Froehlke.

Mr. Froehlke, we are most pleased to have you here, and you may proceed.

TESTIMONY OF HON. ROBERT F. FROEHLKE, PRESIDENT OF THE SENTRY CORP. AND FORMER SECRETARY OF THE ARMY

Mr. FROEHLKE. Thank you very much, Mr. Chairman. Mr. Chairman and members of the committee, I appreciate your invitation to appear and give my opinion on amnesty. At the outset, I should state that the subject of amnesty like so many other important issues that I have faced in both business and Government defies a categorical rightness or wrongness. Amnesty is much like the issue of U.S. involvement in and departure from Southeast Asia. Only those who are absolutely positive of the rightness of their position are wrong.

The fact that he is not sure of his position will not, and I believe should not, deter anyone from testifying before your committee. Obviously, it has not deterred me. We must rely on our personal values, experience, and just plain instinct. Obviously, to refuse to take any position until one is absolutely sure he is right is at best naive and at worst cowardly.

My own values and experience—but mostly my instinct—tell me now is the time to begin to discuss and then act on amnesty. At the same time, and very frankly in an unconfident way, I hastily add that my position could be dead wrong.

But, then, it is not for me but for you Congressman to decide who is right or wrong. And that I guess—I presume—is why Congressmen have hearings.

Permit me to begin by giving my views as to what amnesty is not.

Amnesty is not a liberal rallying point. I am a moderate, as are most Americans who must ask for amnesty before it becomes a reality. Putting a liberal tag on amnesty might glamorize the issue, but it will most certainly dim its political future.

Amnesty is not an "antimilitary" issue. I was, am, and will continue to be promilitary, as are most Americans. Most Americans respect the

military and desire that their country remain militarily strong. To categorize amnesty as antimilitary does the military a disservice and again hurts the cause of amnesty in the political arena.

Amnesty is not "antiadministration." Admittedly, many thoughtful and well-meaning individuals in this administration oppose amnesty. Conversely, others, like myself, were members of the administration, are proud of it, and favor amnesty. The same difference of opinion on this issue can be found in previous administrations.

Amnesty is an act that only a strong, confident, and just nation can bestow. You cannot demand amnesty. You cannot threaten amnesty. Amnesty is given.

The insecure, the mean, the confused cannot ever grant amnesty. Therefore, the fact that amnesty is being discussed augers well for America.

The number of people involved with amnesty is subject to wide variance. Some say 5,000; others 30,000 or 100,000. I suggest over 200 million could and should be involved. There are 200 million Americans doing a proud, generous, and kindly act of bestowing amnesty.

Why amnesty and why now?

When serving as Secretary of the Army, I opposed amnesty. Then most of our young men were obeying the law and reporting for the draft. Some were being drafted and were fighting and were dying in Vietnam.

At that time, we could not say those disobeying that draft law and fleeing from America: "Come home, all is forgiven."

But, why now amnesty for them? Amnesty now, first of all, because the draft and the killing is over.

Amnesty now because we need to begin mending in every way possible the heartbreak and the wounds left by that war. I am not prepared to say Vietnam was right or wrong. I will let the historians do that. However, it is clear that, right or wrong, Vietnam deeply hurt America.

Amnesty now because it is America's youth who are involved, and America has always shown mercy and restraint with its young people.

There are two primary considerations which will dictate the parameters of any workable amnesty. On the one hand, this country will someday again be facing a draft. In developing an amnesty program, nothing should be done which would make a future draft unworkable. I suppose it could be argued that even talking about any amnesty imposes some burden on a future draft. I think not, but if this is the case, I would still accept because the higher priority is the opportunity to heal the hurt.

On the other hand, we must constantly bear in mind that all those potentially involved in amnesty have one thing in common—they were young. They have made a mistake, in my opinion, a serious mistake, but they are young. Therefore, any amnesty program must not be approached from vindictiveness. But rather from the standpoint of a just and generous nation dealing mercifully with a relatively small number of young people who made a serious error.

Those potentially eligible for amnesty can be divided into two distinct groups—those who did not enter military service and evaded the draft and those who entered military service and deserted. The two groups must be treated separately.

I have concluded that all draft evaders should be given blanket conditional amnesty. I readily concede that it would be "nice" if we would only grant amnesty to those who fled for moral reasons and not to those who fled for selfish reasons. Unfortunately, in my opinion, it is impossible to determine intent. Therefore, the amnesty for draft evaders must be blanket.

The amnesty must be conditional. Not necessarily because we want to punish those who ran. Rather because those who ran have not as yet had an opportunity to serve their country like those who stayed and served. Therefore it is only just and reasonable that the first act upon returning to their country should be service to that country—as an obligation and a privilege; not punishment. (I really see very little reason to argue about the merits of a conditional versus an unconditional amnesty. Since leaving as Secretary of the Army, I have had opportunity to travel throughout the United States, and talk and debate with any number of groups on the subject of amnesty. Pragmatically, it is my opinion that the American people would under no circumstances allow amnesty of an unconditional variety to ever be enacted by Congress.)

Service to the country should not be limited to the military. It should certainly include the military but should be as broad as service to fellow man can possibly allow. It certainly would include projects like VISTA, Peace Corps, hospitals and church work.

The length of term to be served would have to be determined by Congress. I think the key consideration should be how long is it necessary to serve in order to perform a useful service. Vindictiveness should not enter into the consideration. In the past I have indicated that I would be satisfied with 3 months service if some duties could be found where useful service could be performed in that length of time. I chose this relatively short period of time in an attempt to indicate that vindictiveness should not be influencing. I confess that the only possible area where I can come up with useful service in that short a period of time would be in volunteering for medical experiments at great personal risk. I hope there will be others and there may very well be others.

Perhaps the least controversial group eligible for amnesty is the draft evader who was sentenced and is serving in prison. I daresay this is civil disobedience at its best. Clearly these should be granted a full pardon and their service in prison should be considered service to country.

The deserter is a far more complicated problem and I have not been able to come up with a solution that completely satisfied me. These facts dictate that it is a different situation than the civilian who evaded the draft. One, the deserter is subject to the uniform code of military justice. Two, it was not uncommon for the desertion to occur after committing a criminal act.

For the time being I have concluded that the deserter must be treated on a case-by-case basis. A board must be created that would look at the deserter's total record in a nonvindictive and generous manner. However, amnesty should be applied only to an act of desertion and no prior or subsequent criminal acts.

Is amnesty really possible?

It is, and there are several encouraging signs pointing that way.

The first sign, of course, is that the dialogue has begun. Amnesty is being considered here in the Congress and in various other forums across the land. This must continue.

Another sign is America's history of forgiveness. In less than 30 years we have forgiven our former enemies—Germany and Japan. We are now expending untold political energy and material resources striving to maintain a semblance of détente with China and with Russia. If we will forgive, and we should, entire nations and hundreds of millions of "enemies," then can't we consider forgiveness, rehabilitation and reinstatement of only a few thousand of our brothers?

But of the greatest encouragement is that America is a strong nation of strong, confident and just people who have long demonstrated a capacity to forgive and forget. These people would consider amnesty.

The meek, the mean, the insecure cannot forgive and forget. Instead, they would demand recrimination, indulge in divisiveness, wallow in self-flagellation. Theirs is to counterattack against those who turned and ran when the Nation needed them. Theirs is to punish, and punish again, the men who wronged them. These people would not consider amnesty, but they are not America's people. So, I am encouraged.

Yes, America can grant amnesty. But should America forgive and forget?

We should not forgive and forget if our reason for doing so is to cleanse our soul from immoral acts.

We should not forgive and forget if our reason for doing so is an attempt to return to this country "the best who left."

But we should forgive and forget if amnesty will help heal the hurt this Nation has suffered. America has been badly hurt this last decade. That is a fact and no amount of blame-placing on individuals or groups will help heal that hurt.

(Let me parenthetically here state that some proamnesty people, I believe, are hurting the cause because I believe any attempt to combine determination of guilt for the hurt with the cause of amnesty will, in my opinion, doom amnesty. There are just too many candidates responsible for the damage—and here I suppose I could include myself although I do not think so—who would feel an obligation to oppose the guilt-placing.)

Unquestionably Vietnam has compounded this Nation's sorrows over the last decade. Thus, isn't it a unique opportunity before us today that we may use amnesty as an agent to heal the hurt?

An unwelcome alternative would be for America instead to indulge in vindictiveness. But, that could only punish America more than America has already been punished. Already I see a direct correlation between the continuing turmoil within the Nation and our present hardline stand on amnesty. The President said long ago, "We need a renewal of the spirit to meet the crisis of the spirit of our country." Is not forgiveness a vital function of the spirit?

Is there a more noble deed than for a strong, forgiving America to say to those who left, come home now? I think not.

Has there been a time when America needed more a profusion of noble deeds? I think not.

In conclusion, gentlemen, let me share with you an observation from my scores of conversations and debates on this issue. It is that it might well be impossible for those most directly involved in Vietnam to ap-

proach amnesty with objectivity and without allowing emotion to influence their position. The draft avoiders and deserters on one hand and the bereaved mothers and widows, veterans or professional soldiers on the other hand might well, and very understandably, look at amnesty from a very personal perspective.

I understand and respect this fact. From their personal perspective, as each views the issue, their individual conclusions are right and just.

I suggest, however, that most Americans can and should look at amnesty from a much broader perspective. Those who have been less affected by Vietnam can and should approach amnesty from the broader perspective of what long lasting effect could it have on America; what long lasting effect will it have on America.

I compliment you for holding these hearings now and thank you for the privilege of appearing before you. Hopefully what has transpired will inspire some of the dispassionate and the disinterested groups among us to judge amnesty. But, not because there is a wrong to be righted. But because amnesty is the opportunity to begin healing the hurt that goes far beyond Vietnam itself.

America today needs its unifying and healing cause.

And if the Good Father will forgive me for moving into his area, a Sunday ago the scripture at our church I thought was very appropriate and describes the kind of climate which will bring about amnesty. I would like to end with a quote from chapter 6, verse 8 of the Phillips translation:

> You know well enough, O people, what is good!
> For what does the Lord require from you,
> But to be just, to love mercy,
> And to walk humbly with your God?

Thank you.

If you have any questions, I would be more than happy to answer them if I can.

Mr. KASTENMEIER. Thank you, Mr. Froehlke, for a most relevant statement.

I am impressed with the notion that we have in past wars, as you pointed out, forgiven our enemies. Perhaps we ought to forgive our sons. You mentioned Germany and Japan. And without intending to heap any additional criticism on the White House, because there is more than enough to lavish upon the White House these days, I would say that I remember a year ago that the administration had proposed a program, which never came about, to aid North Vietnam. If not an act of forgiveness, this was at least a very generous act.

While it never came about for various reasons, nonetheless, it would suggest that if we were capable of such an act, we might indeed be capable of forgiving those who were affected otherwise by Vietnam. Would you not agree?

Mr. FROEHLKE. I would not rule that out. I think it is practical to "forget about it for the moment," just as I would have said at the conclusion of World War II, "forget about it," when I thought of Germany and Japan. But I think now those of us looking back will agree that it was a generous act, and it was, from the selfish interest of the United States of America, a wise act.

Mr. KASTENMEIER. Senator Taft also proposed some form of service although in a somewhat different form than yours. One of the argu-

ments that is raised to the notion that these men ought now to be given an opportunity to serve their country is the fact that over the past 10 years so many have not served. Perhaps they weren't given the opportunity or perhaps they avoided service legally.

This inequity is pointed out by many to suggest that perhaps we need not require of these people a specific term of service because as they suggest, so many others were not asked to serve or avoided service legally.

What is your comment on that analysis?

Mr. FROEHLKE. My comment is I agree that many did not, through what I think was a very unfair draft law. However, there were many who were selected through that draft law and those who were selected and served, I believe did not serve out of punishment.

I have a daughter who is going—or hopes to go—into the Peace Corps. I can assure you she is not looking upon that as her 2-year punishment. She looks at it as a 2-year opportunity and a real privilege.

So, yes; many did not serve through legal means. However, I think those that did, don't feel that they were being punished.

Mr. KASTENMEIER. I thank you for your statement and I yield now to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much, Mr. Secretary. And I forgive you for moving into my area of theology, as you might say, except I hope that your theology can improve. I'm afraid I don't understand your theology here on page 7. It seems to me you dismissed the basic reasons why we should have amnesty.

You say, "We should not forgive and forget if our reason for doing so is to cleanse our souls from immoral acts." I think that would be a good reason.

Then you say, "We should not forgive and forget if our reason for doing so is an attempt to return to this country the best who left." And I think that is another good reason.

And the only reason you give validation to is "We should forgive and forget if amnesty will help heal the hurt this Nation has suffered." And I am not opposed to that, but I suggest that is less honorable than some of the other motives.

Additionally, Mr. Froehlke, I was very surprised to note in your statement on page 2, that you state, "Conversely, others, like myself were members of the administration, are proud of it and favor amnesty." Now, can you mention some others?

Mr. FROEHLKE. I can mention specifically Mel Laird.

Mr. DRINAN. Would you admit by your testimony that the Department of Justice is wrong and that Congress can legislate in this area?

Mr. FROEHLKE. I am a lawyer, but I haven't practiced in 20 years, and therefore I don't want to hedge, but I don't want to stick my legal neck out. And frankly at this stage I don't think it is too important. I think the primary purpose of this committee at this stage is to bring the facts before the American people.

Again I don't think the American public is yet ready for amnesty. Hearings such as this should prepare the way. It is an important issue, but even if it is finally decided that the Congress cannot act, I think these hearings will serve a very valuable purpose.

Mr. DRINAN. Recent polls indicate that they accept it. It is pretty even. It's 45 to 43 in favor of some sort of amnesty. Why do you say they are not ready for it? I heard that 3 years ago.

Mr. FROEHLKE. This is also very personal, but my own poll and letters I have received, from those I get are far more anti than pro.

Mr. DRINAN. So do I, but that doesn't prove anything.

Mr. FROEHLKE. Presbyterians' and Catholics can get together you see.

Mr. DRINAN. On page 3, Mr. Secretary, I have a little trouble with your assumptions at the bottom of the page. You say, "On the one hand this country will someday again be facing a draft. In developing an amnesty program nothing should be done which would make a future draft unworkable."

Your assumptions here are very curious and I have difficulty figuring this out. You assume, I would assume, that young men are not patriotic. That if we had a war that was a good war they wouldn't go and we cannot erode their responsibility or, second, you could say that the U.S. Government is going to enter further wars in which the people don't believe and that we have to have this power of coercion and we can't weaken it, or you can say the United States cannot tolerate too many conscientious objectors and we shouldn't encourage them.

It seems to me the entire assumption should be on the other foot, and that the Government should have to prove to the people that a future war is a just war. I believe we should resolve doubts in their favor if that happens. They are the people who have a sense of morality and it seems to me we should resolve that if they say, "I am not going to believe that this is a good war simply because my Government says it."

In the light of that, why do you now say that "I suppose it could be argued that even talking about any amnesty imposes some burden on a future draft."?

In other words, you are saying, "Don't encourage the conscientious objectors too much; we don't need that type; we want a draft that is workable."

Mr. FROEHLKE. Well, you are putting words in my mouth.

Mr. DRINAN. These are assumptions, not words.

Mr. FROEHLKE. People, good people, conscientious people oppose any amnesty because they say this will encourage future people, selfish people, to avoid serving. And my reply is right along your lines, Mr. Drinan, that I have enough confidence in the young people of America, of any age, that if the issue is right, they will serve as the vast majority did in the Vietnam conflict.

However, I do point out that we should not in any amnesty issue do anything that would indicate that they're real heroes because I do think, first of all, I disagree with that and second, I do think it would encourage the selfish. And amongst us we always have and always will have some selfish people who will use that to rationalize running the next time no matter how worthy the cause.

Mr. DRINAN. Do you think that Congress should pass a law that would reverse the *Gillette* case and allow selective CO's too?

Mr. FROEHLKE. I am a long ways away from that. I think not, but I would really just from a standpoint of not being an expert, not like to answer that. I'm inclined to say no though.

Mr. DRINAN. Why do you say at the top of page 4, categorically, that these people have made a serious mistake? By what morality do you say that? Why do you come out so strong on that?

Mr. FROEHLKE. I hastily added from their standpoint many of them obviously felt they did what they had to do.

It is strictly from my own personal and very prejudiced point of view, I believe they made a mistake, but that is Bob Froehlke speaking. I certainly don't want to judge them from a moral standpoint.

I think from a standpoint of a social scientists, from hopefully a student of government, they made a mistake. I do not address the moral issue.

Mr. DRINAN. Mr. Secretary, I happened to hear you on the radio this morning. As I heard it, it seemed that you were making a serious mistake when you used the old cliche that, "for every one of these people who resisted or deserted someone else had to go." That does not take into account, in my judgment, the large number of people that the chairman mentioned, maybe 10 million or 15 million, who were fortunate enough to go to college and pile deferment upon deferment and get through law school.

Mr. FROEHLKE. If I might add there, the Reporter that was asking the question asked the question about, "Is it not true that for everyone who ran someone else had to serve," and I believe my reply was, "Yes, I guess that is true."

I did not raise it. As I say, he raised it.

Mr. DRINAN. But it really isn't true, is it?

That isn't in your testimony, Mr. Secretary, and so that may be unfair.

At the top of page 5 you say that the American people "would under no circumstance allow amnesty of an unconditional variety to ever be enacted by Congress," yet Senator Taft's plan provided for that.

And if the Committee of Five on the proposed Amnesty Review Board so decided, they could give total amnesty without any alternate service to 99 percent of the people. Would you be opposed to that?

Mr. FROEHLKE. I personally feel under Senator Taft's bill, and the little I have studied it, it is acceptable to me.

I suggest, and you are the politicians and I am not, but I would suggest that in my opinion America isn't ready for that yet. And I would hate to see the amnesty issue fall because we take too hard a stand.

Mr. DRINAN. You say, Mr. Secretary, that the first thing these people should do upon returning to their country is to perform an act of service to their country and that they should assume it as a privilege and not as a punishment.

What do you say to the overwhelming number of people who are in Canada or elsewhere, who totally disagree and say that they already have served their country by going into exile, by raising this moral question? They feel in all candor that your approach is really very patronizing. Rightly or wrongly, that is their position.

Suppose that under the law that Senator Taft proposes and that you propose in effect and principle, Mr. Secretary, that the problem is not solved because the people who are demanding amnesty think entirely differently?

Mr. FROHLKE. I would have two comments. First of all, they are directly involved and from their perspective they perhaps look at it as punishment. My first point would be I don't feel that way and I hope that they would not.

Mr. DRINAN. But suppose they do?

Mr. FROEHLKE. My second point, if they do look upon it as punishment, I don't think 2 years in the Peace Corps or 2 years working for a church or working for a hospital, if it is punishment, is a very great punishment. And I guess I would very pragmatically say if a young man is not willing to then subject himself to that 2-year service, he doesn't want very badly to come home to his family and to his country.

Mr. DRINAN. But thousands of them are already at home under indictment or underground, what about them? Suppose they say "Listen, I don't want to do service. I will just get into some make-shift job and that is what it will be" because Senator Taft's bill say they can't take a real job; they can't exclude a Vietnam veteran or a veteran from being employed. So it is a make-shift job. And suppose they say "This is a pretense of those people who still think that this war was a good war"? I assure you that the overwhelming number of people who are asking for amnesty feel that way.

Are you possibly proposing a law that is not going to resolve the problem at all?

Mr. FROEHLKE. I would think obviously that it is useless to propose a law that would not accomplish anything.

Mr. DRINAN. Right.

And what makes you think you are proposing a law or Senator Taft is proposing a law that will serve anything?

Mr. FROEHLKE. Because from my perspective we are not punishing. From my perspective we are being reasonable in saying serve your country in some worthwhile capacity. And I think, although I have no way of proving it, that most reasonable in saying serve your country in some worthwhile capacity. And I think, although I have no way of proving it, that most reasonable youngsters who left will under those circumstances return and perform useful service to their fellow man.

Mr. DRINAN. Do you have any indication of that?

Mr. FROEHLKE. No.

Mr. DRINAN. No?

Mr. FROEHLKE. No.

Mr. DRINAN. Do you think that Senator Taft might have any indication that even 5 or 10 percent of those who are in this category would in fact take advantage of his bill?

Mr. FROEHLKE. I do not know.

Mr. DRINAN. Thank you, Mr. Secretary.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Thank you, Mr. Froehlke, for coming here and giving us the advantage of your thoughts and feelings in regards to this matter and I think, as a former Secretary of the Army, your observations are perhaps in a little different category than most of us.

I think Father Drinan covered most of the things I wanted to ask you about, but I was particularly interested in your feelings that the American people would not now accept an unconditional amnesty, that is, general amnesty without any conditions attached to it.

Is that correct?

Mr. FROEHLKE. And it is my own political gage, and that is very subjective and perhaps very prejudiced, but as I read it, it comes through loudly and clearly to me that if we are going to have a form of amnesty in the months ahead, it must be of a conditional variety.

Mr. SMITH. Mr. Froehlke, thank you for your help in the dialog, which has been started here in this committee. Thank you very much.

Mr. KASTENMEIER. I would like to say in conclusion that I appreciate most deeply your testimony and I would say notwithstanding the fact that your position may not be approved by all applicants of amnesty, that if indeed the Congress——

Mr. FROEHLKE. May I interrupt there?

My position—and this is the problem with the man in the middle—it really is not agreed to by anybody on the right or on the left.

Mr. KASTENMEIER. I appreciate that. And I believe that if the Congress or the Federal Government does in the future move forward in this area, I think it will be due to your position and others like you. I want to thank you very much personally for the courage you had to come out and take the position you have. I compliment you for it.

Mr. FROEHLKE. Thank you very much.

Mr. KASTENMEIER. I appreciate your appearance and the position you have taken.

Mr. FROEHLKE. Thank you.

Mr. KASTENMEIER. I would next like to call Dr. W. Sterling Cary, president of the National Council of Churches of Christ in the United States of America.

Dr. Cary.

TESTIMONY OF DR. W. STERLING CARY, PRESIDENT OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA; ACCOMPANIED BY REV. RICHARD KILLMER, DIRECTOR OF SPECIAL MINISTRY, VIETNAM GENERATION, AND MEMBER, NATIONAL COUNCIL OF CHURCHES STAFF; AND E. WILLIAM D. GALVIN, JR., EMERGENCY MINISTRY ON CONSCIENCE AND WAR, UNITED PRESBYTERIAN CHURCH

Dr. CARY. Mr. Chairman, I have the Reverend Richard Killmer, Director of our Special Ministry, Vietnam Generation, and a member of the National Council of Churches staff, with me to answer technical questions.

Mr. KASTENMEIER. We are pleased to greet him as well, Dr. Cary.

Dr. CARY. Mr. Chairman and members of the subcommittee, I am W. Sterling Cary, president of the National Council of Churches of Christ in the United States of America.

The National Council of Churches is a federation of 31 Protestant and Orthodox Christian communions in the United States whose aggregate membership totals approximately 42 million persons.

I do not purport to speak for all members of the communions constituent to the council. I am speaking for the governing board of the National Council of Churches, its highest legislative body, which is composed of 340 members selected by member churches in proportion to their size. It is this body which determines the policy positions on

the basis of which the council seeks to fulfill its mandate "to study and to speak and to act on conditions and issues in the Nation and the world which involve moral, ethical, and spiritual principles inherent in the Christian gospel."

At the outset, Mr. Chairman, I want to express our gratitude to you and the other members of this subcommittee for conducting these hearings at this time. During earlier periods of the history of our country, it was the executive who took the initiative in granting amnesty. However, that initiative has not been forthcoming in recent times. There was only a very limited amnesty after World War II, none after the Korean war, and none so far for the Indochina war.

In fact, a distinguished group of religious leaders have found it impossible even to obtain the opportunity to discuss the subject with the present Executive. For nearly 3 months they have sought a meeting with the President. The White House response to me was "His schedule is such that a time is not foreseen when he can meet with them." Therefore, it is reassuring to us to see the Congress take the initiative on a matter which we feel is of crucial importance to society.

The solemn fact we must face today is that we are not "one Nation indivisible." Division and separation exist across American society, much of it is born of the war in Indochina, the longest war in the history of the United States. The war has divided families and friends. It has contributed to polarization between races, classes, age groups, and those with varying lifestyles.

While the whole Nation has been affected by dissension over the war, two groups have suffered especially—those who served and those who resisted participation. I appear before you today to support amnesty for those who have resisted the war. However, I am constrained to express, if but briefly in this particular forum, our abiding concern for others in our society who suffered because of the war.

These victims of the war include the families of men who died in Indochina, those who returned wounded and disabled and their families, those who were taken prisoner and those still missing, and their families. Then there are the more than 7 million other veterans of the Vietnam era. They do not represent a cross section of U.S. society because military manpower procurement during the Vietnam era was selective by race and class.

Many white, middle class, and educated men were exempted or deferred, and as a consequence, those of nonwhite and poorer economic backgrounds filled a disproportionate share of the ranks of the Armed Forces. Thus, many of the problems being experienced by Vietnam era veterans are further complicated by their backgrounds—approximately 20 percent of them return without a high school education, and too many have little to offer the job market.

The Nation is not using its resources to meet the needs of veterans as substantially as it did after World War II. Because of the controversial nature of the war, veterans and their special needs become an unwelcome reminder to a nation seeking to forget Vietnam.

The dynamics which flow from such a tentative relationship apparently contribute to such problems as underusage of the GI bill, unemployment, drug usage, and emotional difficulties. If we are to accomplish true reconciliation in our country, Government and the

institutions of society must provide an adequate response to the Vietnam veteran and his needs.

The National Council of Churches has sought to serve and minister to those affected by the war, through a program called Special Ministries/Vietnam Generation. The first thrust of the program in 1970 ministries to resisters, exiles, and their families, not only in this country, but in Canada and Sweden as well.

We have no desire to engage in a "numbers game" with those who seek to minimize the size of the problem and reduce human tragedy to figures on a page. However, based on 4 years of work in Canada, we can assure this subcommittee that there are around 35,000 U.S. exiles in that country alone.

Since mid-1971, our Special Ministries/Vietnam Generation program has also worked with local and regional church bodies in this country to help them assist Vietnam veteran projects responding to the needs of those returning from Indochina. In addition to working on educational, employment, and health needs, some of these projects have been focused on the special traumas of those veterans who are in prison or carry the added handicap of an other-than-honorable discharge. Therefore, Mr. Chairman, we do not solicit the concern of the Congress for these men from a position of splendid isolation but out of first-hand acquaintance with the range of problems they and their families face each and every day.

In a policy statement entitled "Healing the Divisions of the Nation" adopted in December 1972, the National Council of Churches governing board expressed its concern for all those adversely affected by the war. On the subject of amnesty, it said, "We view amnesty not as a matter of forgiveness, pardon, or clemency, but as a 'blessed act of oblivion,' the law's own way of undoing what the law itself has done."

To whom besides a long-suffering, divided Nation, should amnesty be granted? In its statement, the governing board suggests:

Genuine reconciliation demands that amnesty be granted to all who are in legal jeopardy because of the war in Indochina. The only exception would be for those who have committed acts of violence against persons, and even these cases should be reviewed individually to determine if amnesty is appropriate.

Such amnesty would include:

(*a*) Draft resisters and deserters who have exiled themselves to other countries;

(*b*) Those currently in prison or military stockade, those on probation, those who have served their sentences, and those who are subject to prosecution for violations of the draft or military law;

(*c*) Draft resisters and deserters who have gone underground to avoid prosecution;

(*d*) Vietnam-era veterans with less-than-honorable discharges; and

(*e*) Those who have committed civilian acts of resistance to the war, or are being prosecuted upon allegations of the same.

The traditional way to deal with those in legal jeopardy to whom a nation would extend compassion is an amnesty—the nonprosecution of the law for certain violations by a class of persons and the expunging of the effects of the law for those charged with certain crimes. It is granted not because the Government agrees with the political and moral positions of those affected, but because it is in the national interest. It is forgetting, not forgiving.

The National Council of Churches supports amnesty because:

1. It is a necessary first step toward healing and reconciliations. Abraham Lincoln granted amnesty, even though the idea was unpopular with many, because it was necessary to bring the country together. He knew it would bring reconciliation in the long run and was required if the North and South were ever to be reunited.

2. The imprisonment of persons in legal jeopardy for following conscience rather than law does not serve the Nation in any productive way. It is not rehabilitative—persons are not going to have their consciences changed through incarceration. It is not a deterrent. If there were a truly defensive war or if another nation were truly in need of our support, many of those who would currently be affected by an amnesty would participate. Imprisonment is simply punishment—a further visitation of the trauma caused by the war upon those who did not make the decisions about our involvement in that conflict but must carry the burden of those decisions.

3. We need to have those who would be affected by amnesty play an active role in our society. We need their skills and insights. We need their expression of conscience, their commitment to the universality and interdependence of persons.

4. As Christians we are called to be reconcilers, to be open to God's new and continuing creation, to have and teach compassion, and seek an end to vindictiveness.

The National Council of Churches supports a universal amnesty because:

1. The basic difference between deserters and draft resisters is only a matter of timing.

2. Those with other-than-honorable discharges are barred from many jobs and many cannot receive assistance from the Veterans' Administration. No worthy national purpose is served by demanding continuation of this stigma.

3. The healing, unifying purpose of amnesty can be realized only by extending it to all those in legal jeopardy because of the war. Barring one group or another from an amnesty would only dramatize the division which the war has created in our society.

The National Council of Churches supports an unconditional amnesty because:

1. Case-by-case review is impractical if not impossible. Who among us is qualified to probe the conscience of another, to judge motivations when society asks its young men to forget they have been taught "Thou shalt not kill." As the National Council of Churches governing board said in its statement:

God alone knows what actually motivates the actions of persons, and few act for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who were in the Armed Forces.

2. Conditional amnesty is still punishment—punishment which serves no useful purpose. Since it seeks to conform the dictates of conscience, it would be neither rehabilitative, nor a deterrent.

3. A conditional amnesty would postpone, perhaps destroy, the healing and unifying value of amnesty.

Mr. Chairman, the bitterness of the war years lingers on; yet, we detect a hunger for healing in this country. Some say that all those

who are or feel separated from society because of the war suffer voluntarily. This, of course, is not true. So we plead today for those who suffer—but also for ourselves, our life together, our Nation. A universal and unconditional amnesty would be a clear and simple act which could begin to unite us and signal our desire to live at peace with one another, to build rather than divide. Even as there is an end to war—may there be an end to suffering.

I urge this subcommittee to begin the process of reconciliation.

And again I would like to express our appreciation to you for taking the initiative in making it possible for a national dialog around the issue of amnesty to begin.

Mr. KASTENMEIER. Thank you, Dr. Cary.

Without objection, the policy statement of December 2, 1972, of the National Council of Churches of Christ attached to your statement will be made a part of the record.

[The document referred to above follows:]

NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., POLICY STATEMENT ON THE INDOCHINA WAR: HEALING THE DIVISIONS OF THE NATION

(Adopted by the General Board, December 2, 1972)

The war in Indochina has brought great destruction to three nations of Southeast Asia. Hundreds of thousands of persons have been killed, wounded or made homeless; the cultures have been disrupted; the landscape has been destroyed. The people of the United States must work for the rebuilding of Indochina, and the churches must take a sacrificial part in the reconstruction. But in this statement we will consider the harm which has recoiled upon this nation and its people.

The war in Indochina, the longest in the history of the United States, has also rent the fabric of American society. President Lincoln, responding to the hurts and disjunctions of another conflict, called upon the people of America to "bind up the nation's wounds." Tragically, the attention of the nation was too soon diverted from this task. Recrimination and injustice consequently lasted for an entire century. There is the danger that the American people will be similarly diverted today from the task of healing the nation.

The crisis of the war in Indochina is fundamentally one of conscience. Some Americans thought the war just and necessary, while others thought it an immoral and tragic mistake. Likewise, some young men served in the armed forces, while others resisted participation.

These differences have not always been accepted as permissible divergences of public opinion or even as legitimate exercise of conscience. Instead they have led to slander, recrimination, and the accusation that the basic ideals of the nation have been forsaken.

Consequently, families and friends have been divided by differing opinions on the conflict. For example, it is not unusual for parents to have one son who fought in Indochina, while another emigrated to Canada. Almost every aspect of American life has been affected by dissension over the war. The divisions between races, ethnic groups, age levels, and life styles have been widened as a result of it.

Not only has the whole nation suffered from division over the war, but those who served and those who resisted participation have especially suffered. Over 55,000 Americans have been killed in Indochina. Over 400 have been prisoners of war, held in North Vietnam—some for a very long time.

The veterans of the Vietnam era have also been hurt. Because the Selective Service System exempted and deferred many white, middle-class and educated men, those of non-white and lower economic backgrounds filled a disproportionate share of the ranks of the armed forces. Consequently, many of the problems of the veterans of the Vietnam era result from their backgrounds—approximately 20% of them return without a high school education and their unemployment rate is substantially higher than for others in the same age bracket.

The nation is not using its resources to meet the needs of veterans as substantially as it did after World War II. Many Vietnam era veterans are therefore hurt, frustrated and angry because not only is their nation not showing gratitude toward those who served, but it also appears to be ignoring and rejecting them.

Deep scars were also inflicted on those who believed the war immoral and refused to participate in it. Over 60,000 persons, both draft resisters and deserters, have become exiles in other nations. More than 100,000 men have been prosecuted for draft violations. Untold numbers of draft resisters and deserters have gone underground to aovid prosecution. Although most have returned, or have been captured, over 350,000 members of the armed forces deserted during the Vietnam era.

More than 300,000 Vietnam era veterans have received less-than-honorable discharges, a stigma they will bear for the rest of their lives. Some have been convicted by courts martial for crimes which would be considered felonies by civilian courts, but the actions of the overwhelming majority would either be misdemeanors or would carry no penalty at all in civilian life. The majority of less-than-honorable discharges result not from the decision of a courts martial, but by the order of a commanding officer. Had these men and women not been in the military service, their records would not have been permanently marred by this imputation of wrong-doing.

At this time of national distress, we should remember that God is our final judge; He alone is Lord of the conscience. We will stand at the last awaiting His judgment and needing His mercy. Our human system of justice is not designed to separate the righteous from the unrighteous in any such final sense, but merely to maintain the safety and welfare of the human community. It exceeds its function when it divides the community and stigmatizes some citizens because of past views and actions which no longer pose a threat to the safety of the community, if indeed they ever did.

Healing the lesions in our society left by the war in Indochina will require human compassion and political forbearance. The war was begun despite the protests of a substantial minority of the American people and continued despite the reservation of a majority. Some young men and women agreed with the majority—that the war was a mistake. Believing that it was also unjust and immoral, they refused to participate in it and thus incurred varying degrees of legal jeopardy. To hunt them down and prosecute them now is to add vindictiveness to victimization, neither of which is a proper basis for imposing criminal penalties and will only increase rather than heal the nation's hurts.

We further recognize the need for reconciliation on this issue within the Church. There have been Christians who entered the armed forces believing that the cause in Indochina was right and just. Other Christians have held opposite views which led them to resist and war and the draft.

We believe that Christ works in His Church, calling us together to be one body as a sign of His intention for the whole human family. His reconciling love overcomes mistrust and suspicion and heals hurt and pain. Christ calls us to new Being, both personally and corporately.

As He calls those in His Church to be reconciled, so we covet for America the experience of reconciliation. For reconciliation to begin, however, certain actions are necessary.

Genuine reconciliation demands that amnesty be granted to all who are in legal jeopardy because of the war in Indochina. The only exception would be for those who have committed acts of violence against persons, and even these cases should be reviewed individually to determine if amnesty is appropriate.

Such amnesty would include:

(a) draft resisters and deserters who have exiled themselves to other countries;

(b) those currently in prison or military stockades, those on probation, those who have served their sentences, and those who are subject to prosecution for violations of the draft or military law;

(c) draft resisters and deserters who have gone underground to avoid prosecution;

(d) Vietnam era veterans with less-than-honorable discharges;

(e) those who have committed civilian acts of resistance to the war or are being prosecuted upon allegations of the same.

God alone knows what actually motivates the actions of persons, and few act for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who were in the armed forces. For instance, we do not believe that draft resisters and deserters deserve different treatment, since the latter would be penalized simply because their convictions may have changed after entering the service, rather than before.

We view amnesty not as a matter of forgiveness, pardon, or clemency, but as a "blessed act of oblivion," the law's own way of undoing what the law itself has done.

Reconciliation further requires creating the possibility of new lives for those Americans hurt by the war in Indochina. Veterans should have adequate help for their unemployment, education, and health needs. To accomplish this will require the interest and response of all institutions in the United States. In addition, veterans' benefits provided by federal and state governments should be increased to a level at least comparable to those afforded veterans of World War II.

The Church at all levels needs to make its healing ministry available to veterans. Prisoners of war and those incarcerated in United States prisons also will require the development of opportunities to help them live fulfilling lives. In addition those Americans whose needs were not met but were even exacerbated because resources of the nation were diverted to the war effort, require the special attention of our nation. By granting amnesty and providing opportunities for those hurt by the war in Indochina, we would begin to repair some of the damage to our nation inflicted by that war.

Mr. KASTENMEIER. Dr. Cary you say that you can assure the subcommittee that there are approximately 35,000 U.S. exiles in Canada alone. On what do you base that figure? We have received a number of figures and yours may be higher than some others we received.

Dr. CARY. Let me call on Rev. Richard Kilmer to answer that question.

Reverend KILMER. Yes sir. That figure is based upon our experience in working with the nine aid groups in Canada during the last 4 years. These are aid groups of Canadians and ex-Americans who are very much concerned about the war resisters and their country.

We have responded for the last 6 years to Americans who have come there asking for help in housing and jobs and counseling and that kind of thing. This record is really based upon their experience. It is also based upon the number of persons who have acquired landed emigrant status from the Canadian Government during the Vietnam era as well.

And the third fact it is based upon, this last year, as you probably are aware, the Canadian Government changed their immigration law to grant the possibility to those who were underground in that country to come forth and to declare themselves and hence regularize their position within Canada.

Our aid groups had contacts with 14,000 persons during this 60-day period and 13,000 of whom were American war resisters. These are people who had not yet regularized their position in Canada. So that would be over and above what the Canadian Government's record would show.

So based upon that, our guess, and of course anybody's guessing somewhat in this area, is the number we have shown.

Mr. KASTENMEIER. Thank you. Dr. Cary, you heard two preceding witnesses call for a conditional amnesty. The position that you take, the position of your church, is for unconditional amnesty. If that is not obtainable at this time and if some sort of amnesty conditioned on service such as VISTA or the Peace Corps or to churches or to hospitals in a limited term is called for, do you still persist in calling that punishment? Do you think such service might not be useful both to the individual concerned and to the country?

Dr. CARY. Yes, in December 1972 when this resolution was adopted we had full discussion of different forms of amnesty, conditional versus unconditional. The feeling expressed by the Governing Board was that not to grant general amnesty would negate the concept of am-

nesty itself and would not be an instrument of healing, but would be a cause for a further continuation of divisiveness.

Real appreciation was also expressed during that debate for the lifting of conscience that persons resisting the war performed for the total American society and the feeling that we would be saying to those who had acted on our behalf, who had acted to uplift our consciences, that you are not to be punished for that act. Punishment certainly would be very unsettling to those who have serious questions about the morality of the Vietnam war in the first place.

Mr. KASTENMEIER. Hypothetically, and I raise this question not for my own personal point of view but rather to establish a dialog on some of these questions, if we heard from a number of exiles who said "we would be willing to return to the country and participate in some constructive service such as those proposals entail," then would you still oppose that.

Dr. CARY. What we are arguing is that they be given an opportunity to return to the country as full citizens of the country. And I am convinced that many of them would personally choose to exercise some vocation or some life calling that would be in the interest of the country. But to make this a condition for their return is the point that would be violated if we granted conditional as opposed to general amnesty.

Mr. KASTENMEIER. Thank you. I now yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much, Dr. Cary and Mr. Kilmer. I was very interested in the fact that a distinguished group of churchmen have been trying for 90 days to see President Nixon. Would you describe the group and also give us the date, if you would, of the letter when he said he was very busy?

Dr. CARY. Well, it has been 90 days.

Mr. DRINAN. Ninety days, almost 90 days?

Dr. CARY. Yes, it began back prior to Christmas in December. We had a very large representative group which sent a telegram to the President expressing the desire of a cross section of American leadership to——

Mr. DRINAN. Dr. Cary, was it leaders only from the National Council of Churches or was it Catholics and Jews too?

Dr. CARY. Yes, it was an interfaith leadership group.

Mr. DRINAN. Well if you would, Dr. Cary, today or as soon as possible please give us the names of everybody associated with that. I would like to have it in the record and also, if I might have the letter that came from the White House to you?

What was the date of that?

Dr. CARY. Well, we received the letter in January in response to a December request.

Mr. DRINAN. Well, it may be listed somewhere.

Reverend KILMER. Sir, it was sent the week before Christmas around December 13th. If you would like the names of the persons who were in that delegation right now, we can give you that list now.

Mr. DRINAN. All right. I do not want to read the list here, but I assume it is a distinguished group and we ought to have that in the record.

Reverend KILMER. Fine. I will submit this material for the record.

[Subsequently Reverend Kilmer submitted the following documents:]

[Western Union Mailgram]

This Mailgram is a confirmation copy of the following message:

NEW YORK, N.Y., *December 13, 1973.*

President RICHARD NIXON,
White House,
Washington, D.C.

DEAR MR. PRESIDENT: As private citizens and as people who share in the leadership of some of the religious communities in the United States, we seek an opportunity to discuss with you a matter of serious importance to us and to the country, we hope to share with you our concern for the postwar healing of the Nation and the consideration of an amnesty.

It has been almost a year since an agreement was reached leading to the withdrawal of U.S. combat troups from the hostilities in Vietnam. We have rejoiced as a Nation in the return of the American prisoners of war. For many families this will be their first Christmas reunion in years. We believe it is now the time to consider the matter of amnesty for those opposed the war and for those who served in the Armed Forces but are stigmatized for life by the less than honorable discharges.

Historically the Christmas season is the traditional time for the announcement of amnesty, when mankind yearns for peace and good will. Just as we have always tempered justice with mercy in the administration of the law, so there are times when a forgetting of the law, and amnesty are desirable. The occasion of offenses is now passed, and there is a growing public confidence to sustain an amnesty, and a readiness to focus on the future that will maintain an amnesty. We pray that you will share with us in discussion as to whether this will be an appropriate time to announce such an act of grace.

Our pastoral concern for the thousands of Americans and their families who are estranged from one another impels us to seek a meeting with you on so important a matter for the happiness of the people. Would it be possible to have this meeting during the coming week before Christmas?

We consider this request to be confidential while we await your response, and until such time as arrangements can be made for you to receive a delegation representing the inter-religious task force on amnesty.

We would appreciate a reply by Monday, December 17 to our staff director William Galvin 2128703143 at the Inter-Religious Task Force on Amnesty, Room 767, 475 Riverside Drive, New York, N.Y. 10027.

Sincerely.

Sterling Cary, President National Council of Churches; The Right Reverend Paul Moore, Jr., Episcopal Bishop of New York; William P. Thompson, Stated Clerk of the United Presbyterian Church in the U.S.A.; Bishop John Wesley Lord, Executive Director, Bishops Call for Peace, and Self Development of People, Washington, D.C.; Thomas J. Gumbleton, Auxiliary Bishop, Archdiocese of Detroit. A signed copy will be following.

LOUISE RANSON.

THE WHITE HOUSE,
Washington, December 18, 1973.

Mr. WILLIAM GALVIN,
New York, N.Y.

DEAR MR. GALVIN: This is with reference to the telegram which Dr. Cary, Bishop Moore, Bishop Lord, Bishop Gumbleton and Dr. Thompson sent the President on December 14 asking to meet with him.

The President is most appreciative of the expression of concern of these religious leaders, but, regrettably, his schedule is such that a time is not foreseen when he can meet with them.

Matters relating to those cited in Dr. Cary's telegram and letter are under continuing review by the Department of Defense, the Department of Justice and Selective Service and, should he and the others wish, a meeting with their representatives might be arranged.

With best wishes,

Sincerely,

TERRENCE O'DONNELL,
Staff Assistant to the President.

[Western Union Mailgram]

This Mailgram is a confirmation copy of the following message:

NEW YORK, N.Y., *December 23, 1973.*

President NIXON,
White House,
Washington, D.C.

DEAR MR. PRESIDENT: We join with Dr. Cary, Bishop Moore, Bishop Lord, Bishop Gumbleton, and Dr. Thompson of the Inter-Religious Task Force on Amnesty in urging you to consider a Christmas amnesty and to meet with a small group of religious leaders sometime next week to discuss this important matter. We would appreciate a reply as per our request personally delivered to Ms. Rosemary Wood on December 13 to Staff Director William Galvin 212-870-3143 at the Inter-Religious Task Force on Amnesty, Room 767, 475 Riverside Dr., New York, N.Y. 10027.

Robert V. Moss, President, United Church of Christ and George W. Webber, President, New York Theological Seminary.

LOUISE RANSOM.

NATIONAL COUNCIL OF THE CHURCHES
OF CHRIST IN THE U.S.,
New York, N.Y., February 13, 1974.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On December 12 representatives of the Interreligious Task Force on Amnesty communicated their desire to discuss with you the importance of amnesty for hundreds of thousands of young Americans still suffering from the effects of the Vietnam War. We regret that you were unable to see them at that time but were encouraged by Mr. Terence O'Donnell's indication that such a meeting might be arranged upon completion of the State of the Union Address. We wish to renew our request that you meet with leaders of the religious community at the earliest possible date to pursue this matter of crucial concern to the nation.

Sincerely yours,

W. STERLING CARY,
President, National Council of Churches

For: James Armstrong, Bishop of United Methodist Church, Dakotas Area; Howard W. Bartram, General Secretary, Friends General Conference; John C. Bennett, President Emeritus, Union Theological Seminary (New York); Peggy Billings, Ass't General Secretary, Women's Division, Board of Global Ministries, United Methodist Church; Malcolm Boyd, Episcopal priest and author; Robert McAfee Brown, Professor of Religious Studies, Stanford University; John H. Burt, Bishop of Ohio, Episcopal Church; William Davidson, Episcopal Bishop of Western Kansas; Edwin T. Dahlberg, Past President, National Council of Churches; Robert L. DeWitt, Episcopal Bishop, Philadelphia; John J. Dougherty, Auxiliary Bishop of Newark; Theodore M. Hesburgh, President, University of Notre Dame, Indiana; Lorton G. Heusel, General Secretary, Friends United Meeting; William W. Holman, Associate Professor of Pastoral Theology, Yale Divinity School; David R. Hunter, Deputy General Secretary, National Council of Churches; James K. Mathews, Resident Bishop, United Methodist Church, Washington, D.C. Area; J. Brooke Mosley, President, Union Theological Seminary (New York); C. Kilmer Myers, Bishop of California; Davie Napier, President, Pacific School of Religion; Richard J. Neuhaus, Paster, Church of St. John the Evangelist (New York); Richard Shaull, Henry Luce Professor of Ecumenics, Princeton Theological Seminary; Roger L. Shinn, Professor of Social Ethics, Union Theological Seminary (New York); Howard Schomer, World Issues Secretary, United Church Board for World Ministries; Joseph Sittler, Emeritus Professor of Theology, University of Chicago; Robert E. Spears, Bishop,

Episcopal Diocese of Rochester; John M. Swomley, Jr., Professor of Christian Ethics, St. Paul School of Theology; Joel K. Thompson, Associate General Secretary, Church of the Brethren General Board; Margaret Ellen Traxler, Executive Board, National Coalition of American Nuns; Ann Patrick Ware, S.C., Ecumenical Committee Chairwoman, Leadership Conference of Women Religious; Cynthia Wedel, Past President, National Council of Churches; John H. Yoder, Professor of Theology, Notre Dame University and Associated Mennonite Seminaries.

THE WASHINGTON OFFICE,
NATIONAL COUNCIL OF THE CHURCHES
OF CHRIST IN THE U.S.A.,
Washington, D.C., February 15, 1974.

HON. WILLIAM B. SAXBE,
Attorney General of the United States, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: In mid-December seven of us, writing as private citizens and as people who share in the leadership of some of the religious communities in the United States, sought a meeting with President Nixon to discuss a Christmas amnesty for hundreds of thousands of young Americans still suffering from the effects of the Vietnam war (copies of telegrams enclosed). We were informed that the President was unable to meet at that time, leading us subsequently to renew our request, following Christmas, for a meeting with the President "at the earliest possible date". We await scheduling of such a meeting.

In the meantime, we were informed by Mr. Terence O'Donnell, Staff Assistant to the President, that matters related to those we cited in our first telegram are under continuing review by your Department, as well as the Department of Defense and the Selective Service System. He suggested that a meeting at these three agencies would be in order.

We responded, on January 3, saying we would welcome such an opportunity, although, as we trust you will understand, we cannot consider this an alternative to meeting with the President.

Would you kindly inform me of your willingness to see a small group of us representing the Inter-Religious Task Force on Amnesty, an ecumenical organization of representatives from various religious groups in the United States. We would be grateful if such a meeting could be scheduled before March 1.

We appreciate your consideration and we look forward to the opportunity to communicate our views on this matter of crucial concern to the nation.

Sincerely,

W. STERLING CARY,
President, National Council of Churches.

NOTE: Same letter sent to Hon. James R. Schlesinger, Secretary of Defense and Mr. Byron V. Pepitone, Director, Selective Service System.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE PARDON ATTORNEY,
Washington, D.C., February 26, 1974.

REV. W. STERLING CARY,
President, National Council of the Churches of Christ in the U.S.A.
Washington, D.C.

DEAR DR. CARY: The Attorney General has asked me to acknowledge your letter of February 15, 1974 concerning amnesty.

From time to time, the President has issued general amnesty proclamations that applied to certain groups of previously convicted individuals. One such proclamation, issued after World War II, pardoned a number of Selective Service violators who were specifically named therein. All such proclamations, however, have applied to persons who had been previously convicted and had paid the penalty imposed upon them by the courts.

As far as I am aware, no consideration is presently being given to a general amnesty proclamation for persons who refused to serve in the armed forces during the Vietnam conflict.

Sincerely,

LAWRENCE M. TAYLOR,
Pardon Attorney.

NATIONAL HEADQUARTERS,
SELECTIVE SERVICE SYSTEM,
Washington, D.C., February 26, 1974.

Rev. W. STERLING CARY,
President, National Council of Churches,
Washington, D.C.

DEAR MR. CARY: I have been asked by the Director of the Selective Service System to reply to your letter of February 15 in which you request a meeting to discuss amnesty for violators of the Military Selective Service Act.

As you know, the President has already stated with respect to the fugitives (estimated to be approximately 4400) that "those who deserted must pay their price" and "the price is a criminal penalty for disobeying the laws of the United States." They are included within the 5119 violators presently under indictment and the 3080 violators presently under criminal complaint or FBI investigation as of January 1, 1974. We and the Department of Justice are at this moment preparing a position on the issue of amnesty for them as well as for the 7902 violators who have been convicted for violating the Military Selective Service Act since August 4, 1964 (date of the Tonkin Gulf Resolution). Our views will be presented in response to a request by the Senate Judiciary Committee for comments on Senate Bill 2832—The Earned Immunity Act of 1974—as well as to a House of Representatives Judiciary Subcommittee which will hold hearings on the question of amnesty on March 7 and 8.

Because there are not "hundreds of thousands of young Americans still suffering from the effects of the Vietnam war" who would be affected by amnesty, as seems to be a popular belief, the matter does not appear to be one which is of "crucial concern to the nation" demanding immediate attention. Secondly, the President has made his position clear in the matter with respect to fugitives. Thirdly, the Administration's position on S. 2832 as well as for the scheduled hearings has not as yet been established.

In view of the above, it would not appear that a meeting with the Director to discuss amnesty is warranted or appropriate at this time.

Sincerely,

WALTER H. MORSE,
General Counsel.

Mr. DRINAN. I wonder if this same group has "thought of going to the Attorney General, since he is in charge of the policy, I suppose, and, you know, the position of the Department of Justice in that they think we are wasting our time because we have no jurisdiction in their judgment?

Dr. CARY. We had a response suggesting a number of persons within the President's family who would be open to a visitation. We indicated our willingness to do that, not in lieu of a visit with the President, but to take advantage of that, too.

Mr. DRINAN. You mean his official family?

Dr. CARY. Yes; but now I do not think we have heard any more.

Mr. GALVIN. We received two responses. One was from the Department of Justice and one from the Selective Service System. Their responses were similar to the responses presented the other day. They emphatically let us know their position, and it was our conclusion that it would not be profitable to meet with these people, that they did not seem open to any dialog we could engage in.

Mr. DRINAN. All right, thank you. Concerning your statement of some 35,000 U.S. exiles in Toronto, the thought occurred—and I have not mentioned this to the chairman—would it be helpful in your judgment, Dr. Cary, if this subcommittee had hearings in Toronto?

Dr. CARY. I think it would be a very, very helpful experience. There have been a number of statements made, which tend to interpret the response of persons who have resisted and are in exile, to proposed actions before the committee for discussion. I think it is another thing

for persons who are extensively in that situation to even respond to this question of general versus conditional amnesty, and I think we should have their opinions and that it would certainly at least put into your consciousness their feelings.

Mr. DRINAN. I must say, I feel more and more that the very people who are the intended beneficiaries of these laws we propose cannot even come to listen to the discussions.

I would suggest, Mr. Chairman and Dr. Cary, just a thought that came to me that Good Friday, April 12, would be a most symbolic day for us to be in Toronto.

Would you say, Dr. Cary and Mr. Killmer, that in the long run and really in the short run, too, the only relief that can be given is an enactment by Congress of a provision for selective conscientious objection?

As you know, all of the churches and synagogues have endorsed this concept. There was resistance to this, this morning. Senator Taft said he would not vote for it, and Secretary Froehlke likewise said he is not in favor of a law that would give selective conscientious objectors this status.

Do you feel that should be done by the Congress and done soon?

Dr. CARY. I would feel very strongly to that. Rich, would you like to answer?

Reverend KILLMER. Yes; the NCC has taken a policy on that, I believe about 6 years ago we adopted a policy on that, so that has been discussed.

Mr. DRINAN. I know it has been here for a long, long time, and people come before us and they use whatever shred of law they can to justify amnesty. If we had a law providing for selective conscientious objection, we could use it retroactively, like Senator Taft and the Secretary were using any shred of law retroactively.

I wish to thank both of you for your testimony. It is a very fine contribution.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you.

Dr. Cary and Reverend Killmer, thank you very much for appearing this morning with the statement of the National Council of Churches. Dr. Cary, you say in your statement that the Nation is not using its resources to meet the needs of veterans as substantially as it did after World War II. You may be correct in that. I have the feeling, as a Member of the Congress, that the Nation and the Congress are trying to do a good job for these veterans. I am sure that we can always do a better job. But I also want to assure you that I am sure that the Congress is not in any way trying to ignore these veterans, these Vietnam veterans, who have problems, as you have indicated. But I do want to congratulate your National Council of Churches for the work that you are doing with the special ministry, with this Vietnam generation, both in regard to those mostly young men, but probably now accompanied by young women, wives, who have felt impelled to exile themselves from this country, but also with the work that you are doing to help the Vietnam veterans themselves, who are in this country and who need help, and not only apparently at the level of your national council have you given this help, but from promoting projects at the local church and local regional areas. And I think this is a very im-

portant work, and I do congratulate you on it and trust that you will redouble this effort.

And it might be, for instance, that if the Congress were to pass some kind of a conditional amnesty bill requiring 2 years of service, these are areas of service where some of these young people might be used.

I had another question. Included among the people to whom the national council would extend an unconditional amnesty are, I believe, Vietnam veterans with less-than-honorable discharges. Is that correct?

Dr. CARY. Yes.

Mr. SMITH. Well, in many instances, do you not think that is a different problem, because in many instances and perhaps in most instances, there has been some judicial or quasi-judicial decision rendered in that regard, a military justice decision or military administrative decision, whereas with the draft resisters, particularly, there have not been any judicial or administrative decisions made?

In other words, would not you say that it is a somewhat different problem and perhaps a problem we ought to be concerned with, but one that you cannot really lump in with draft resisters?

Reverend KILLMER. No; we would not agree with that. In reality, there have been a number of groups of persons with whom the law, either civilian or military, has dealt; that is, those persons who violated the draft and were imprisoned and are out of prison. The law also dealt with them, and they are also concerned about amnesty and would in fact be protected by amnesty.

The same with those with other-than-honorable discharges; it is true the military has dealt with them, but it is because the military has dealt with them that they have this particular problem.

And if we were in fact to accomplish the healing that must take place in this country, that group must be included as well.

Mr. SMITH. I am merely pointing out what would appear to me to be a fact, that a great many of the people with less than honorable discharges got that kind of discharge because of some violations of duty or military law or civilian law that they may have participated in when they were in the military, whereas there was a judgment, maybe a military-judicial judgment or military-administrative judgment, that they should be dishonorably discharged or the other types of less-than-honorable discharge given to them.

And I was merely pointing out the fact that it seems to me that we should be concerned with them, but they are a different problem, and that perhaps the solution there or a possible solution would be by review board.

Reverend KILLMER. Yes; but we would contend that also those who have in fact been convicted of a draft violation have also been dealt with by the law in the same way, and that in our opinion does not opt out the fact that they would be a product of a potential amnesty. I do not think that argument is enough to say that they therefore should not be included.

Mr. SMITH. All right, I guess what I was trying to point out is the fact, or the possible fact, that the basis for a person to have a less-than-honorable discharge might be entirely different from the basis of what we are proposing in amnesty; that is, an unwillingness to meet the requirements of the selective service law.

Dr. CARY. That possibility is certainly there.

Mr. SMITH. Yes. Thank you, Dr. Cary and Reverend Killmer.

Mr. KASTENMEIER. The gentleman from Iowa.

Mr. MEZVINSKY. Thank you.

We have had a quorum call, so we will probably have to recess. I have one question or one point.

Did your organization debate the conditional versus the unconditional?

Was it basically overwhelmingly the consensus that in view of the conflict you pointed out as to the punitive nature that as a result your organization decided to go for the unconditional?

Dr. CARY. Correct, this had a very significant margin.

Reverend KILLMER. Absolutely.

Dr. CARY. It was not a closely contested action. There was an overwhelming feeling.

Reverend KILLMER. I think the vote was something like 95 to 18.

Mr. MEZVINSKY. In favor of it?

Reverend KILLMER. In favor of unconditional amnesty.

Mr. MEZVINSKY. Thank you.

Mr. Chairman, in view of our time limits, thank you, and I have no other questions.

Mr. KASTENMEIER. The committee expresses our appreciation to you, Dr. Cary, and to your colleagues for your appearance this morning. It has been very helpful.

At this point the committee will stand in recess until 1:30 this afternoon, at which time we will reconvene to hear Mr. Fred Darling, representing the Non-Commissioned Officers Association, and Mr. Lynn Cavin, Immediate Past National Commander of the Marine Corps League. Until that time the committee stands in recess.

[Whereupon, at 12:20 p.m., the subcommittee recessed to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION

Mr. DRINAN. The subcommittee will please come to order. We will resume the hearings on amnesty that went into a brief recess when the Members had to go to the floor.

Opening this afternoon's testimony will be Mr. Fred E. Darling, executive coordinator, Military and Veterans Affairs, the Non-Commissioned Officers Association of the United States of America, and with him is Mr. Lynn Cavin, immediate past national commander, the Marine Corps League.

Mr. Darling, please proceed as you wish.

TESTIMONY OF FRED E. DARLING, EXECUTIVE COORDINATOR, MILITARY AND VETERANS AFFAIRS, NONCOMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA; ACCOMPANIED BY H. LYNN CAVIN, IMMEDIATE PAST NATIONAL COMMANDER, MARINE CORPS LEAGUE

Mr. DARLING. Mr. Chairman and members of the distinguished subcommittee.

The Non-Commissioned Officers Association of the United States of America, NCOA, and the Marine Corps League welcome the oppor-

tunity to testify in opposition to any and all legislative proposals introduced in Congress that will grant amnesty or earned immunity to draft evaders and armed forces deserters of the Vietnam conflict.

The positions of the NCOA and the Marine Corps League were unanimously mandated by their membership assembled in convention. The association, representing 160,000 plus members, is the world's largest enlisted military association, and its mandate was ratified on the 20th day of April 1973, at San Antonio, Tex. The league, congressionally chartered and composed of 16,000 active, retired, reserve and veteran Marines, ratified its resolution in August 1973, at Miami, Fla.

The NCOA's and the Marine Corps League's viewpoints are contained in the attached position paper available for the subcommittee's perusal at its earliest convenience. The paper was prepared by Mr. "Mack" McKinney, a retired sergeant major of Marines, who is the NCOA director of legislative affairs and the league's national legislative officer.

The comments contained therein expand somewhat on a commentary delivered by Mr. McKinney on a recent television newscast originating from WTOP–TV, Channel 9, Washington, D.C. Mr. McKinney offered these remarks on February 5, 1974, in rebuttal to a previous "News 9" commentary by Mr. Hugh Sidey on January 27, 1974, advocating amnesty. It is also an exhibit to the attached position paper.

With your kind permission, the commentary will be read at this time.

The Non-Commissioned Officers Association of the United States of America, composed of 160,000 plus noncommissioned and petty officers of the U.S. Armed Forces, 85 percent of which are on active duty as career-enlisted military members, is opposed to granting amnesty to those men who avoided the draft or deserted the armed forces during the Vietnam conflict.

We have listened to many appeals, everything from, "They were too young to realize the error of their ways," to, "It has been done before, so let's do it again." But to any and all please, we can only say, "Humbug."

These men are criminals, just as certain as one who commits or contributes to murder, or at least homicide. Their refusal to be drafted, or to go into or remain in combat, caused others to be drafted, sent into combat as their replacements, and possibly wounded, maimed, or killed.

There is only one way to deal with these men, and that is through due process of the law. They may return and lend their pleas of extenuating circumstances—if there are any—to their cases before a competent judge and jury. If the latter feels they are or are not criminally liable, then justice has been accomplished.

But to let them return to the country they have shunned, and possibly serve in the armed forces when there is little or no chance of being shot at by an enemy, is a slap in the face to the millions of men who were drafted, who were wounded, who were maimed, or who were killed in a bloody, unpopular war.

To further excuse these men because of youthful age bears no rationale to recent congressional action allowing 18-year-olds the right to vote. If they are old enough to vote, they are old enough to serve their Nation.

The good God calls upon us to be merciful—to forgive our trespassers—but he did not mention amnesty. Our mercy and our forgiveness can be granted through the present judicial system.

In conclusion the NCO Association and the Marine Corps League respectfully extend their appreciation for the Chair's indulgence and sincerely hope that the distinguished subcommittee will uphold the honor and dignity of our Nation's military and veteran patriots by sending House Concurrent Resolution 144 or 385 to the full committee for ratification.

Mr. Cavin and I now stand prepared to answer any questions from the subcommittee's membership.

Mr. DRINAN. Thank you very much, Mr. Darling, for your testimony. Without objection, if you so desire, we will insert in the record at this time the document that you brought with you in an attachment to your testimony.

Mr. DARLING. Yes.

Mr. DRINAN. Without objection, then, it is so ordered.

[The document referred to follows:]

THE NON-COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA

POSITION PAPER ON "AMNESTY"

By now, almost everyone interested in or knowledgeable of the issue can provide the dictionary definition of the word "amnesty:" (1)—a general pardon, especially for political offenses, (2)—release from punishment, and (3)—forgiveness.

Since the issue is whether or not the federal government should grant amnesty to those men who evaded the draft or deserted from the Armed Forces during the Vietnam era, we should examine each of the definitions and see how they relate to these men.

First is "a general pardon, especially for political offenses." Since the Vietnam war was a product of both political parties, it requires a stretch of imagination to relate a political offense with the act committed by the offenders. Their requirement under the law was to serve or to continue to serve a term of active service in one of the U.S. Armed Forces. Whether or not they were eventually to serve part of that commitment in a hostile environment, of which was appalling to them, was a matter of assignment. Some would have been assigned to Vietnam, some would not. In any case, preinduction selectees had the choice to claim conscientious objections prior to or after entering the Service. Inductees, once in, had a choice before or after being assigned to Vietnam.

The second definition, "release from punishment," involves but a small number of the group of thousands we are dealing with on the issue. Therefore, it appears that "forgiveness" is the term we need to discuss as the main topic—"Should we forgive or not forgive?"

On the legal side of the fence, it is wrong for the legislative branch to provide forgiveness, since mercy is normally a product of the judicial branch of our federal government. The laws are made by Congress and enforced by the judicial procedure. When one tries to cross over and attempts to obstruct the other in its due process, then the "checks and balances" placed into the Constitution by our forefathers becomes a mockery. Only our Chief Executive and certain Judiciary officials have the power under the Constitution to grant forgiveness or mercy. (Except for certain offenses listed in the XIV Amendment, Section 3.)

One cannot rationalize mercy without justice. There would be no justice in allowing all draft evaders and Armed Forces deserters to return to the United States free of all charges and, particularly, to stand alongside their veteran brothers with the thought that they were just as right as those who served their Country.

The men who evaded induction into or deserted from the Armed Forces should be required, as is now law, to face the judicial process the legislative branch of our federal government has seen fit to offer those who defied the Selective Service Act or the Uniform Code of Military Justice.

To grant "amnesty" to these men, despite the contrary, is setting an example that is unparalleled in the history of English-speaking nations. With the exception of the acts of amnesty afforded during the Coolidge and Truman administrations, all others granted in England and the United States were the results of civil strife. (England, by the way, has not granted further amnesty for over two hundred years. Its last act was offered to participants of the Jacobite rebellion in 1747.)

The Coolidge and Truman grants, the exceptions noted in the preceding paragraph, bear no relation to the present issue. Coolidge offered amnesty to those who deserted the Armed Forces *after* World War I. President Truman's pardon included only a minute number of offenders the majority of which had already been processed under the law.

Even Lincoln's grant of amnesty came during the war, not afterwards. Those pardoned had to return to the Armed Services and continue to serve while the Civil War was still being fought. Many subsequently saw hostile action.

In all cases of amnesty noted in U.S. history, as well as those granted in England and France, two important factors appeared:

(1) *All participants were not included in the grant*, and/or

(2) *All participants were involved in civil strife.*

So history, if we wish to use it as a guide, would prohibit the granting of amnesty to all Vietnam era draft evaders and Armed Forces deserters. Likewise, the U.S. Constitution would prohibit the act from being a product of the legislative branch. This then leaves the moral side of the issue to discuss.

As for the latter, many words can and may be expressed for and against amnesty. Since the Non Commissioned Officers Association of the United States of America (NOCA) is opposed to general amnesty or "earned immunity," it presents the following exhibits as pertinent to its position.

Appendix I is a fictional two-act play that might very well be a true incident if general amnesty is granted, and Appendix II is a speech written and delivered by an American citizen, Mr. Saul L. Penn. Both exceptionally well wrap up the NCOA's feelings on the moral question.

Appendix III as a commentary by Mr. Mack McKinney, NCOA Director of Legislative Affairs, and it summarizes the Association's position.

A PLAY IN TWO ACTS

Act I

The date is 1975. Congress, through enacted legislation, has granted amnesty to thousands of Vietnam era draft resisters. They are now back in the United States, and one draft resister (*D.R.*) is sitting in a bar on a stool next to a veteran (*VET*).

D.R.—"Hey, Mac, are you a Viet Vet?"

VET—"Yeh! Served two years in the Army with 13 months in Vietnam during the Tet Offensive."

D.R.—"Rough, Mac! Were you drafted?"

VET—"Sure. Weren't you?"

D.R.—"Well, they tried to, but I took off to Canada. No way in hell they were gonna' get me in the Army and have some gook shoot my butt off."

VET—"You mean you're one of those 'draft dodgers?' What did you get when you came back to the States?"

D.R.—"Nothin', Man. All the folks were tickled to death and even the judge up at the courthouse said he was glad I was back. Congress forgave us, you know. The war was immoral, and those guys up there in Washington knew it. That's why they passed the amnesty law. 'Forgive and forget,' they said. About time too. It was pure hell having to live out of the country without the family—and like a damned criminal. Don't you agree?"

VET—"Maybe! Vietnam wasn't no bed of roses. 'Course I didn't get wounded, or maimed or killed, or get captured by the NVA like a lot of the guys did. But there was those damned malaria infested jungles, rice paddies, and never-ending mountains. Then when I came home, there weren't any parades or citations and no jobs. My folks were glad I was back, but the judge told me I ought to get a job before I got into some kind of trouble. Seemed to me that people just didn't give a damn about us or the war."

D.R.—"Then why did you let them draft you for?"

VET—"Well, I thought it was the right thing to do. My dad told me it was every American's duty to serve his God and country. Then there was the draft law too. But now I don't know. I just don't know!"

Act II

The date is 1995. The United States is again at war. Congress has revived the draft induction authority, and thousands of young Americans are being called to arms. The Vietnam veteran (*VET*) is at home. His oldest boy (*SON*) enters the family room and advises his father that he is being drafted.

VET—"Forget it, Son. Take off and go to Canada instead."

SON—"Hey, Dad, it's the law that I go. They could lock me up in prison and throw the key away if I didn't. Besides, my country needs me."

VET—"Listen kid, don't worry about it. The whole damned thing is immoral anyway. You can go to Canada, or wherever you want, stay there until the war's over, then wait until some compassionate legislators call for amnesty again. They'll get it through like they did back in '75, and you'll be home safe and sound."

SON—"But Dad, you served in the Vietnam war, didn't you?"

VET—"Yeh, but one fool in the family is enough. Now pack your clothes. I'm drivin' you to Canada."

APPENDIX II

Amnesty

A general pardon, especially for political offenses.
Release from punishment.
Forgiveness.
So does Webster define amnesty.

Ladies and gentlemen. We have been blessed lately with the return to our shores of several hundred men who were prisoners of an antagonist of ours for up to 10 years. Notice I said "antagonist" and not "enemy," for the thesis of my talk does not depend on the status of our recent conflict with North Vietnam as a war or anything else, nor, I contend, does it depend on one's beliefs as to the validity or morality or justification for that conflict.

The question I wish to discuss with you tonight is whether the several thousand young men who have illegally left our country to avoid service in the armed forces, out of a professed conflict with their beliefs, not to mention the risk of physical injury, should be welcomed back to the protections and benefits and opportunities of our society now that the danger has passed.

We are told by some that this would be the compassionate thing to do, by others that it is the moral thing to do, and by still others that there is precedent from previous wars in our history for doing just this thing.

Well, I would not want to stand here tonight accused of a lack of compassion. Indeed, I have compassion for the three million young men who did set aside years from their lives to serve our country in this conflict. I have the utmost compassion for the parents and wives and children of those men who served and will never return, and for the men who spent years in captivity, not knowing when their bondship would end, and still, on being set free, expressed their delight and pride in their country's strong stand.

As for morality, I challenge the argument that to serve this country, even when you believe its cause to be wrong, is immoral. I challenge those who say that to do so puts us in the same class as the butchers of Nazi Germany or wartime Japan. Ours is a nation of law, laws created and established by ourselves through our elected representatives, not handed to us by some omnipotent and untouchable despot. Some of these laws will be poor, and some will commit injustice. But as we learn of our mistakes we correct them by democratic processes. And as we lay claim to the protection of these laws, so must we agree to abide by them or be prepared to pay the consequences for their infraction.

On the matter of precedent, I have found no parallels sufficiently close to the present situation to serve as guidelines. Lincoln absolved deserters from the Union ranks who would rejoin their units and serve out their enlistments; but at the time they might still have faced the risks of battle. Andrew Johnson extended clemency to the whole south, but he had a divided nation to pull together—and the men he forgave felt strongly enough about their cause to bear arms in its support. Harry Truman's Amnesty Board tried 15,000 WWII deserters, and forgave 10% of them on religious grounds, but none for intellectual, sociological, or political reasons.

Different circumstances do make comparisons with the past difficult; but going back to the Civil War for a moment, let me quote an excerpt from an essay of the times by John Stuart Mill, written in 1862.

"War is an ugly thing, but not the ugliest of things; the decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse.

A man who has nothing for which he is willing to fight, nothing he cares about more than his own personal safety, is a miserable creature who has no chance of being free, unless made and kept so by the exertions of better men than himself."*

*John Stuart Mill, "The Contest in America," *Fraser's Magazine*, February, 1862. [Mr. Saul L. Penn is an American citizen and a scientist residing in Bethesda, Md. The speech above was delivered to a local Toastmasters International Club on the date noted.]

Ladies and gentlemen may I respectfully suggest that those better men today have recently returned from Vietnam. Certainly, appeals for amnesty should be considered on an individual basis; but as a general principal, in view of the type of government that we have, the illegal avoidance of service in the armed forces of the United States should not be excused.

SAUL L. PENN.

APPENDIX III

The Noncommissioned Officers Association of the United States of America, composed of 160,000-plus noncommissioned and petty officers of the United States Armed Forces; 85 percent of which are on active duty as career-enlisted military members; is opposed to granting amnesty to those men who avoided the draft or deserted the Armed Forces during the Vietnam conflict.

We have listened to many appeals—everything from, "They were too young to realize the error of their ways"—to, "It has been done before, so let's do it again." But to any and all pleas, we can only say, "Humbug!"

These men are criminals—just as certain as one who commits or contributes to murder, or at least homicide. Their refusal to be drafted, or go into or remain in combat, caused others to be drafted, sent into combat as their replacements, and possibly wounded, maimed or killed.

There is only one way to deal with these men, and that is through due process of the law. They may return and lend their pleas of extenuating circumstances—if there are any—to their cases before a competent judge and jury. If the latter feels they are or are not criminally liable, then justice has been accomplished.

But to let them return to the country they have shunned, and possibly serve in the armed forces when there is little or no chance of being shot at by an enemy, is a slap in the face to the millions of men who were drafted, who were wounded, who were maimed, or who were killed in a bloody, unpopular war.

To further excuse these men because of youthful age bears no rationale to recent congressional action allowing 18-year-olds the right to vote. If they are old enough to vote, they are old enough to serve their Nation.

The good God calls upon us to be merciful—to forgive our trespassers, but He did not mention "amnesty." Our mercy and our forgiveness can be granted through the present judicial system.

[The above commentary was delivered by C.A. Mack McKinney, Director of Legislative Affairs, NCO Association, on WTOP–TV, Channel 9, Washington, D.C., Tuesday, February 5, 1974, in answer to a Hugh Sidey commentary advocating Amnesty on January 27, 1974.]

Mr. DRINAN. Does Mr. Cavin want to say anything at this time?

Mr. CAVIN. No, sir.

Mr. DRINAN. Thank you very much.

I yield to the distinguished gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I just want to thank you for coming and for giving us the benefit of your organization's feelings.

Do I understand that your organization would take the same position on conditional amnesty as it does on absolute amnesty?

Mr. DARLING. Most assuredly.

Mr. RAILSBACK. Thank you.

Mr. DRINAN. I am pleased to yield to the distinguished gentleman from New Jersey, Mr. Sandman.

And I am glad to see that our chairman, Mr. Kastenmeier, is present. I will yield the chair to him in a moment.

Mr. KASTENMEIER. I would ask the gentleman from Massachusetts to retain the chair. It has been part of my policy to encourage other members to participate in presiding.

I would like to extend a warm welcome to our witnesses. I appreciate their views. I am pleased that you could come here on behalf of your constituency bodies.

Mr. DRINAN. I have just one question.

What was the motivation for taking up the question of amnesty at your last convention?

And second, was there any dissent from the statement that was adopted?

Mr. CAVIN. None whatsoever. It was unanimous by the delegates at the national convention.

Mr. DRINAN. Is this the first statement that you have made on amnesty?

Mr. CAVIN. No, sir. There was one made a year ago, the year previous to this in August 1971.

Mr. DRINAN. All right, fine.

We thank you very much for coming and we will make this a part of the record.

Thank you very much, sir.

Mr. DARLING. Thank you.

Mr. DRINAN. Our next witness this afternoon will be Mr. Abe Simon of New York.

Mr. Simon's son was invited to appear before this committee today. He was a member of the U.S. Armed Forces who deserted in 1968 and lived in Sweden for 4 years, and thereafter in Canada. Mr. Lewis Simon returned to this country late last year and surrendered to the Federal authorities at that time.

The subcommittee felt that Mr. Lewis Simon was uniquely qualified to testify on the application of this legislation to those living in exile, and for that reason the subcommittee wrote to the Secretary of Defense on February 28 and asked that the Secretary make the proper arrangements for Mr. Lewis Simon to appear as a witness before us today.

On March 4, the Acting General Counsel of the Department of Defense replied to the committee, stating that "In view of his status, and the potential for prejudicing his subsequent trial, it would be inappropriate for the Department of Defense to arrange for his appearance."

Copies of that correspondence will be inserted into the record without objection at this point.

[The documents referred to follow:]

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 28, 1974.

Hon. JAMES R. SCHLESINGER,
Secretary of Defense, Department of Defense,
Washington, D.C.

MY DEAR MR. SECRETARY: The Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary has scheduled hearings on March 7, 8, and 11, 1974, on pending legislation relating

to the subject of amnesty. The measures involved are H.R. 236, H.R. 674, H.R. 2167, H.R. 3100, H.R. 5195, H.R. 10979, H.R. 10980, H.R. 13001, H. Con. Res. 144, and H. Con. Res. 385.

Among the people who would be affected by the passage of any of these measures are American exiles living abroad. One of the witnesses suggested to this Committee is a young man who could make a significant contribution to the debate on these measures. He is Private Lewis H. Simon, 125-36-8208. Mr. Simon deserted from the U.S. Army and lived as an exile in Sweden for many years. He subsequently visited with many groups of exiles in Canada and Europe and may be uniquely qualified to represent the views of American exiles toward this legislation.

This Committee would like to receive the testimony of Mr. Simon on Monday, March 11 at 10:00 a.m. At the present time he is confined at the Fort Dix Area Confinement Facility at Fort Dix, New Jersey, awaiting trial on charges of desertion. Would you please have the proper arrangements made so that Mr. Simon may present oral testimony to the Committee on that date respecting this pending legislation.

Sincerely yours,

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 4, 1974.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary of Defense has asked that I reply to your letter of February 28 requesting that Private Lewis H. Simon appear before your Subcommittee. As you noted, Private Simon is now in confinement and awaiting trial. In view of his status, and the potential for prejudicing his subsequent trial, it would be inappropriate for the Department of Defense to arrange for his appearance, in response to your invitation.

Sincerely yours,

L. NIEDERLEHNER,
Acting General Counsel.

Mr. DRINAN. We regret that Mr. Lewis Simon cannot testify before us this afternoon. In his place, we nonetheless are pleased and privileged to receive the testimony of his father, Mr. Abe Simon, who is here.

Mr. Simon, would you please proceed?

TESTIMONY OF ABE SIMON ON BEHALF OF LEWIS SIMON, ACCOMPANIED BY TOD ENSIGN, COUNSEL FOR LEWIS SIMON

Mr. ENSIGN. If I may, my name is Thomas Ensign. I am an attorney for Lewis Simon and work with the Safe Return Amnesty Committee. I would like to make a brief statement about the case because we are quite concerned about the military's position, and we want to really clarify what we see to be the true state of affairs.

The pretense of the military that they have been concerned with defending Lewis' constitutional rights, his right to a fair trial, is just that. We regret it. We want to place in the record the fact that since Lewis Simon has been confined pending trial at Fort Dix, he has been placed in solitary confinement on three occasions. He is in soli-

tary confinement right now. Access to defense counsel, defense clerks, and other legal assistance has been refused on several occasions. We have an investigation pending with General Pruitt at this time, and I think it is just unconscionable at this time that the Pentagon can posture itself as being concerned about this young man's rights or possible prejudice which might stem from his testimony today.

In listening this morning to some of the others and the statements of the former Secretary of the Army particularly, it more than ever makes me anxious to hear the testimony of men like Lewis Simon. To have Secretary Froehlke sit here and tell us that the war in Vietnam is somehow to be forgotten, that the things which motivated thousands of men like Lewis to leave, to resist at great possible cost, should be forgotten and to tell them this is nothing, this is to be forgotten and we must move forward and reconcile our country, is an outrage, and I only wish that Lewis could be here today to confront this kind of reasoning directly.

Abe would like to make a statement from Lewis, which he would have given had he been here.

Mr. DRINAN. One question. His being in solitary at this moment is not related to this committee's investigation?

Mr. ENSIGN. I do not have the information to answer that with any conclusionary evidence. I think the pattern of the past few weeks has shown that Lewis' position about the war, his talking to the other men in the stockade, has been the source of the harassment.

Mr. DRINAN. Thank you.

At this point before you begin, Mr. Simon, I will announce the rule for the entire afternoon. We hope that all witnesses will keep their statements substantially under 15 mintues, because we do have nine witnesses scheduled for this afternoon.

Mr. Simon, you may if you so desire place your statement in the record at this point and speak to us about the point you wish to bring up. Will you proceed?

Mr. SIMON. Thank you, Mr. Chairman. I am here in the dual role as a father of Lewis Simon and also as a spokesman for him because, as you know, he has been denied the right to speak. Of course, I am deeply involved personally with him. I try to be completely objective and try to see the viewpoint of various other organizations.

One thing struck me very hard, and that was the statement by the Noncommissioned Officers Association that if they are 18 and old enough to vote, they are old enough to fight. You might as well say they are old enough to think, also. And these boys have thought this thing out. They have devoted years contemplating what the effect of their actions would be.

I believe that it took more courage to do what they did than to submit to what they thought was not proper.

And before I read Lewis' letter, if I may, I would like to explain my own viewpoint. I, too, have served more than 3 years in European operations.

When Lewis first deserted, my mind was completely military and similar to those who spoke before we did. Not until years later, not until 2 or 3 years later, did I realize that what these boys did, they did with the full conviction that what they did was right. They knew and felt that this was an immoral war.

I can give you examples of my own son. I am deeply involved with him. He was stationed at Fort Jones, a member of the Army Security Agency, and he was cleared for operation with the Army Security Agency. And when he did desert—and I think that was an important point—that was a great blow to the Army, and that is one of the reasons he is being harassed now. And he is being harassed in the stockade. Almost any insignificant detail, the slightest violation of any regulation, immediately imposes a deep sentence upon him. He is immediately thrown into the hole, into segregation. He is being made an example.

There is no justice in this at all, in my opinion. And I will take another moment just before I read his statement.

I also feel that through his efforts we here back home fully realize what has gone on. Over the years, we all went along minding our own business, doing our own jobs. Only through the efforts of these boys, by their acts, did we realize what had been going on with the Pentagon papers, which revealed it. The shabby 1964 Gulf of Tonkin resolution was revealed, and I think all these things have backed these boys up.

I will now proceed with his statement, if I may.

Mr. DRINAN. Go ahead.

Mr. SIMON. This is the statement of Pvt. Lewis Simon. He is at present in the stockade at Fort Dix awaiting court-martial, which will be held next week, March 18.

"I would like very much to have appeared in person before you today, but the Defense Department prevents me from doing so. After three months of pretrial imprisonment in the Fort Dix Stockade—being subjected to threats and intimidation, forced solitary confinement, and being denied the due process of law—it did not surpise me that the Pentagon refused Chairman Kastenmeier's request that they release me to appear before your Subcommittee today.

"While members of Congress and officials from the Pentagon discuss various amnesty proposals, it should not be forgotten that, at the same time, the military continues to hunt, imprison, and permanently stigmatize thousands of us who refused duty in Vietnam. This continued persecution is the military's response to amnesty, just as their denial of my right to testify here today—out of a phoney concern about possible 'prejudice' so my case—is in itself an eloquent statement as to their views of the issue."

Again, quoting Lewis:

"Next week I will be court-martialed. Like all those before me who have passed through the military system of justice, the result of my trial has already been assured: I will be found 'guilty' as charged, imprisoned, and eventually given a debilitating less-than-honorable discharge."

He asks, "Why?"

The answer is simple: "Because I am one of the half-million ordinary American GI's who dared to challenge U.S. policies in Indochina—policies which have destroyed the land and peoples of Southeast Asia and have claimed the lives of 53,000 young men like myself.

"Due to the nature of our role in Indochina, which both civilian and military policymakers contend was in the Nation's best interests, opposition to the war grew to unprecedented proportions. The truth about our role finally reached the American people through returning Vietnam veterans, informed elected officials, revelations of various My Lai's, the Pentagon Papers, and press correspondents whose reportage went beyond the official versions concerning the war.

"The truth about the war reached me earlier than it did most people, probably due to my background in Asian studies. I questioned our presence in Southeast Asia, and my knowledge of their rich history and culture mean that I could not accept the military's attempts to portray the Vietnamese as somehow less than human."

And if I might deviate from this letter a moment, just to make this clear, after Lewis received his degree in linguistics, his specialty was Chinese and he undoubtedly would have been an interpreter for intercepting Vietnamese messages. He then attended the University of Hawaii where he lived with oriental people and slept in their homes for 2 years, and he received his master's degree in linguistics. After that he went to Formosa, Taiwan, and spent 2 years there living with orientals in their homes, sleeping there, eating there, and that I believe is why he did what he did more than anything. The fact that the Army considered these people as gooks, less than subhuman, and he who had spent so much time with them and knew them personally, of course felt otherwise. I believe that this was one of the spurs that induced him to do what he did.

Now, if I may go back to his letter:

"I refused to serve in Vietnam because I knew the war to be surrounded by official lies and distortions that staggered the imagination. Even now, more revelations are brought to light through the continued investigations of certain government agencies and their programs for Indochina.

"In time, with or without the early support of our nation's leaders, the American people will come to realize the truth about resistance to the Indochina War. In light of the persistent Administration campaign to distort our motivations, this truth will be learned much the same as the true nature of the war came to be known: through the long step by step process of counteracting official lies and distortions with the actual information."

"Then, people will understand that I, for example, went to Sweden, not as an immigrant or expatriate, but as a political exile: one among one million victims of corrupt and criminal U.S. war policies.

"In a few months, my wife Monica—

And that is not my wife, but Lewis' wife—

". . . will give birth to our first child. When he is old enough to read about the Vietnam war, he will undoubtedly view it as the most sordid period in his nation's history—unless future Vietnam-style policymakers somehow manage to involve us in an even more dishonorable war within a single generation, an eventuality, I sincerely hope we who have resisted have helped to prevent.

"Does this mean that all of us who resisted the Vietnam war would not defend our country should the situation call for it?

"Certainly not. It means simply that we will not allow ourselves to be placed into the situation of saying to the entire world: 'I was only following orders.'

"With all my heart, I wish to rejoin my family, my friends, and my neighbors. But I am not a criminal and cannot accept conditions for this right—especially when they are dictated by the very same persons responsible for the incalculable suffering and destruction brought by this war.

"Have these persons not already done enough to corrupt, destroy, and divide through their Vietnam policies?

"The proposals for a conditional amnesty, which in most cases are initiated and sponsored by supporters of the war, at best reduce amnesty into a matter of punishment and redemption, which only serves their own interests and the interests of others who somehow profited from our national suffering over Vietnam.

"Only one kind of amnesty can end this vicious cycle of victimization: a universal, unconditional amnesty for all those who have resisted the military and the draft during the Vietnam era."

That is the end of his letter.

Now, if I may also say, I was in Sweden 2 years ago after Lewis had deserted for 3 years. At the beginning I did not want to see him. I did not care to see him at all because I thought he had done something which did not agree with my policies then. As I told you, I changed my policies.

I have seen many of the people that he was with and I have gotten their viewpoints, and I can say sincerely that they too are sincere in their opinions. They took the only step that was open to them in the Army, the only possible step, a complete disassociation from this evil.

I also saw him 2 years later in Canada after he had married Monica. We had a wedding reception for him in Canada and there too I spent time with him and many of the war resisters in Canada. I received their viewpoint, too. I feel deep down that should this country ever be invaded or attacked, they would never hesitate, they would not hesitate even a moment, in the defense of their country.

Mr. DRINAN. Thank you very much, Mr. Simon.

I yield to Mr. Kastenmeier for questioning.

Mr. KASTENMEIER. Yes, thank you.

I want to say in this connection about the subcommittee's desire to have your son testify, we had concluded that this testimony would have been very useful to the committee and so we requested he testify. We also, as the gentleman from Massachusetts has indicated, wrote to the Defense Department requesting his attendance.

Mr. SIMON. And I thank you for it.

Mr. KASTENMEIER. This they did not agree to because of the reasons cited, the interference with his trial. We decided not to resort to extraordinary process to compel his attendance.

I will also say that this subcommittee has, from time to time, received the statements of those who could not be present. On newsmen's privilege legislation, for instance, we received the statement of a reporter in New Jersey in jail, who desired to speak on the question of newsmen's privilege.

This subcommittee also deals with prisons, and you can well imagine that many of the prisoners most effected could not ever be here in Washington to testify on their own individual part.

I suggest that your son's words are nonetheless eloquent or to the point by virtue of his absence and I am mindful that it may be commented that many of those affected are not present. We have had testimony from one who served, I think 19 months, in prison for a selective service violation, and others who had less than honorable discharges and are affected thereby, but we could not have all of those most affected. We will receive some statements for inclusion in the record of those presently in exile or at least whose presence is made impossible on the question of amnesty. And so I think it is only fair to comment in that connection, this committee has made an attempt to hear from those most affected by this legislation, and second, even though they cannot be present actually in this room, their statements will be received and can nonetheless be effective.

Thank you.

Mr. DRINAN. Thank you, Mr. Kastenmeier.

I yield to Mr. Railsback.

Mr. RAILSBACK. I have no questions. I want to thank you for coming.

Mr. SIMON. Mr. Chairman, if I may say something else?

I almost feel I should be in the group that was here before me. I was a member of the Veterans of Foreign Wars for 15 years, too. I often wonder—and I speculate on this to myself—if I was not involved, would I take this effort, would I care, would I give a damn about the other boys?

I have searched my mind, too, and I feel that indeed I would. I think many people by being neutral are simply avoiding the issue completely.

It has become a moral dilemma and they seem to exorcise themselves by saying aloof from it, and I think that compromising position, which I find myself in, has brought about a complete change in my mind.

I was—well, I will not say gung-ho, but I did serve quite a bit, but I have changed completely.

I realize these boys brought home to us the message of actually what was going on.

I thank you for your indulgence.

Mr. DRINAN. Thank you very much.

I yield to the gentleman from New York, Mr. Smith.

Mr. SMITH. Thanks, Mr. Chairman. I do not have any questions for Mr. Simon. I am reading the statement of Pvt. Lewis Simon and I will read it in full later. I should be very interested in that.

Thank you, Mr. Simon, for bringing your son's message to us.

Mr. DRINAN. I yield to the gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. Mr. Simon, do you know why your boy is in solitary confinement?

Mr. SIMON. Oh, yes.

Mr. SANDMAN. What did he do?

Mr. SIMON. Many things. I did not want to draw forth tears or ask for too much sympathy. I will give you a few examples. They wake him up at 2 a.m. in the morning and tell him that his shoes under his bed, that one faces north and one faces south, and they should both

be facing the same way. He was deep in slumber and he resented the fact that he had been awakened for so minor a thing, and he said: "I will not change it." And they immediately dragged him down.

No. 2, at one time his blanket——

Mr. SANDMAN. Do you know this to be a fact or is this what he told you happened?

Mr. SIMON. He told me.

Mr. SANDMAN. Well, this is how you know?

Mr. SIMON. I cannot tell it as a fact because I was not there. I presume he would not lie about it.

Mr. SANDMAN. They put him in solitary confinement just because his shoes were pointing in the wrong direction, is that what he said to you?

Mr. SIMON. Yes; but he would not change them. If he had indeed changed them, he would have avoided being put in solitary.

Mr. SANDMAN. First of all, when was he first apprehended?

Can you tell me that?

Mr. SIMON. He was not apprehended. He surrendered voluntarily.

Mr. SANDMAN. When was that?

Mr. SIMON. On December 19 at a public hearing.

Mr. SANDMAN. Of this year or last year?

Mr. SIMON. Of 1973, of course.

Mr. SANDMAN. And from the public hearing where did he go?

Mr. SIMON. From there the FBI came in and took him and Ed McNally and handcuffed them and took them right to the Fort Dix stockade. He has been there for 3 months now.

Mr. SANDMAN. Well, was he in solitary confinement when he was first put in the stockade?

Mr. SIMON. No; I do not believe so. He was just held pending some sort of decision of what to do with him.

Mr. SANDMAN. All right.

Now, when did he first desert the Army?

Mr. SIMON. Christmas of 1968.

Mr. SANDMAN. And then what happened?

Mr. SIMON. I was completely unaware of his intentions. He had not told me. I am sure had he told me he would know my great opposition to what he intended to do. I have four boys and Lewis——

Mr. SANDMAN. When he deserted the Army, where did he go?

Mr. SIMON. He immediately embarked for Sweden.

Mr. SANDMAN. In 1968?

Mr. SIMON. That is right, the end of 1968.

Mr. SANDMAN. All right.

How long did he stay in Sweden?

Mr. SIMON. He has been there for 5 years.

Mr. SANDMAN. And he returned from Sweden when?

Mr. SIMON. He returned?

Mr. SANDMAN. When did he come back from Sweden?

Mr. SIMON. To the States?

Mr. SANDMAN. Yes, when?

Mr. SIMON. On the day before December 19, before he surrendered.

Mr. SANDMAN. Now, in your testimony you favor unconditional amnesty.

Why do you favor unconditional amnesty?

Mr. SIMON. I have heard this question many times. Mainly because what these boys did in their opinion and my opinion was not criminal or illegal. I said before they took the only step that they thought would bring to the forefront a situation, which they thought was immoral. I stress the word "immoral" or "illegal" because of what I have heard and what I have read and naturally because I am defending my son.

Mr. SANDMAN. I can appreciate that but how can you say that what they did was legal?

Mr. SIMON. Illegal?

Mr. SANDMAN. You say it was legal. Don't you think it was against the law to desert the Army?

Mr. SIMON. Yes, it was against the law to desert the Army.

Mr. SANDMAN. All right, now as a law-abiding citizen, do you have the right to make up your mind when you are going to obey the law and also when you are not going to obey the law?

Mr. SIMON. Of course not. I realize desertion is desertion.

Mr. SANDMAN. All right, now let's follow that through. You admit he did not obey the law. There was a law in existence at the time and now you say that to those in the same position, there should be no condition upon which a forgiveness of their disobeying that law should be made.

Mr. SIMON. In his opinion he felt he was not disobeying the law because he was involved in something which he considered illegal. Now the argument has gone forth many times, is it or is it not illegal? And these boys feel it was an immoral war and they took the only step that was possible for them.

Now you may or may not agree. At the beginning I didn't agree either.

Mr. SANDMAN. I have no further questions. Oh, let me ask just one more if I may——

Mr. SIMON. May I respond——

Mr. SANDMAN. Let me ask just one question. Unconditional amnesty means no conditions at all. Suppose the Congress imposed one condition, an allegiance to the Government of the United States. Would this boy pledge his allegiance to the Government of the United States?

Mr. SIMON. Indeed he would, yes, he would.

Mr. SANDMAN. All right.

Mr. SIMON. He would.

Mr. SANDMAN. All right. I have no other questions.

Mr. KASTENMEIER. Mr. Mevinsky?

Mr. MEZVINSKY. Mr. Simon, I want to say that the voice of your son was heard today whether you read the words or whether he did.

I want to discuss the question of unconditional versus conditional amnesty. What do you think the position of your son would be if he was told that the Congress passed a law granting conditional immunity based upon serving 2 years in some form of alternative public service, such as hospital work, Peace Corps work, or something of that nature? Could you indicate for the committee what his reaction would be, if he has discussed that with you, and what your own viewpoint is?

Mr. SIMON. My own—and this would answer the question of Congressman Sandman, too—yes, yes, ordinarily if it was done of their own volition, he would gladly serve 2 years. But back in their minds they have the feeling, the very feeling that should they accept this conditional surrender, this conditional amnesty I mean with 2 years of service, and without being arrogant, they feel that they are admitting that they were criminals, that they did commit a crime. And in their minds they still feel they didn't do anything criminal. That is open to debate and dispute, but they honestly feel that they didn't do anything criminal and by accepting a 2-year service, they would be admitting their crimes. That is their main opposition to the 2-year servitude.

Mr. MEZVINSKY. You pointed out that you were a member—but, are you now a member of the VFW?

Mr. SIMON. No, no, I left them 5 years ago or 6 years ago.

Mr. MEZVINSKY. In view of their strong feelings on amnesty do you feel that there is a chance that there may be a change of heart, a change of feeling or do you think that it is a position that is going to hold right on down the line, no matter what action is taken by the Congress?

Do you sense any feeling from within the organization that with the proper exposure and the kind of education that Senator Taft mentioned this morning, that the public, let alone the groups that have testified against amnesty, will begin to see the healing process that could come about with immunity that you are talking about today?

Mr. SIMON. Yes, but I left many years ago, 6 years ago before the amnesty issue had really come to the front where there wasn't too much debate about it at that particular time. Now it has become an issue.

I think you gentlemen are aware amongst our group, Project Safe Return, we are doing all we can to obtain unconditional amnesty for these boys.

There are Gold Star Mothers, mothers who have lost their sons, and we realize how tragic it has been and they are with us and they are for us. There are also sons of colonels, of high-ranking officers, and I believe you can understand the heartache they brought to their parents, but they too are with us. They have come over.

I was only a T–4, an ordinary technical sergeant, so I can't claim that I stood too high, but my opinion in the beginning has changed.

I realize what these boys have done. They honestly and sincerely thought they were doing the right thing and I am with them.

Mr. MEZVINSKY. Thank you.

Mr. KASTENMEIER. Thank you, Mr. Simon, for your testimony this morning.

Mr. SIMON. Thank you for your time.

Mr. KASTENMEIER. The next witness the Chair would like to call is Mr. Ronald H. Brown, director of the Washington bureau, National Urban League.

Mr. Brown, we have your statement. We will include it in the record in its entirety together with the accompanying statistics. I would ask you in view of the fact there are seven witnesses remaining, to try and summarize it briefly for the committee.

TESTIMONY OF RONALD H. BROWN, DIRECTOR, WASHINGTON BUREAU, NATIONAL URBAN LEAGUE

Mr. BROWN. Thank you, Mr. Chairman. My name is Ronald H. Brown and I am the director of the Washington bureau of the National Urban League.

Of course, it is a pleasure for me to appear before you to present the views of the league on the question of amnesty and related problems.

The subject of amnesty is certainly one with which the National Urban League has a great deal of concern for we have successfully operated a military and veterans affairs program since 1967 and feel that we have gained a great deal of understanding about the problems of life related to military service. Over that period of time we have provided assistance to some 45,000 minority veterans in the areas of education, employment, housing, health and welfare, and the administration of justice.

It is because of this experience, Mr. Chairman, that the National Urban League is here to discuss with this subcommittee an amnesty-related problem which seems to have been virtually overlooked or ignored during the national debate on amnesty for Americans who, for whatever reasons, refused to answer the Nation's call to military duty. While we agree that it is noble and indeed right to consider the granting of amnesty to them, we feel that at the same time the Congress should consider the grievances of those who did serve but who, for whatever reasons, were separated with other-than-honorable discharges.

Given the new morality of the Nation's young people about war and its concomitant evils, we offer no argument against the concept of amnesty, but we strongly argue that consideration for those who served, whatever their deeds, should have priority with the Congress. The basic rationale for granting amnesty for those who refused to serve during the Vietnam war is that the war was immoral and unjust and therefore those who resisted military service were justified in their actions. Support for this group has been growing over the past several years and months, precipitating the national debate we face now. Unfortunately, to my knowledge, no substantial movement has been generated anywhere in this country on behalf of those who willingly submitted to the rigors of the military system, and received less than honorable discharges.

The American Civil Liberties Union Foundation, in its Project on Amnesty has determined that approximately 450,000 veterans of the Vietnam war have less-than-honorable discharges and that the proportion of blacks who have had discharges is far more than anyone could deem fair.

It is important to understand, Mr. Chairman, that the military, like the vast majority of our other institutions, has somehow learned to dispense justice in a discriminatory manner. Minority group members were drafted in greater numbers, assigned in greater numbers to front-line duty or to unskilled, dead-end jobs, and generally abused by the unfair system of military justice. Finally, those who were called upon to bear the brunt of the duty on the front lines were ejected in greater numbers with less-than-honorable records.

The limited discharge-upgrading services, now underway, with its tedious review processes, are totally inadequate and promise to do little in redressing the wrongs of the recent past. If minority veterans with bad discharges are to avoid disproportionate hardships in civilian life, Congress must act forthrightly in removing the blight of dishonor from their military records.

The problem is broader than just the matter of having a bad discharge. The inequities of the past somehow perpetuate themselves, as has been pointed out by the American Civil Liberties Union.

Their reports indicate that if we take a look at the prison populations in this country, we will see beyond a doubt that they are populated by a large measure by people who have received less than honorable discharges from the military.

It should be noted that at this point in time when unemployment is excessively high, discharges are being used to deny jobs to those who otherwise qualify for them. To understand the scope of the problem, it is only necessary to consider that about a million veterans left the service with less-than-honorable discharges since 1950. Full too many of these bad discharges were given under circumstances that would not earn any sort of punishment in civilian life.

It is also necessary to know that even discharges which have the appearance of being honorable are in fact coded with personal characteristics which may serve to discriminate against millions of men who are not even aware of the presence of such a coding system.

The National Urban League estimates that there are some 200 such code numbers used on discharges and it understands that employers in the Nation have access to resources for decoding them despite Defense Department denials to the contrary.

We are convinced that this unjust system of coding discharges must be completely uprooted if civil liberties are to remain intact and fairness served. We thus urge this subcommittee to direct the Department of Defense to move swiftly to end the coding system altogether and to refuse to honor all requests for personal information about veterans.

While the practice of using separation program numbers (SPN) on discharges hampers the civilian progress of all veterans, it works a special hardship on minority veterans who already face many hurdles in our society.

Bad discharges—administrative, undesirable, or dishonorable—make it extremely difficult or often impossible for minority veterans to find jobs, even those to which they may be entitled by virtue of their veteran status.

A study prepared by the National Urban League's Department of Research indicates that within all the services, blacks receive a greater percentage of other-than-honorable discharges than whites.

The tables included in this text clearly show this to be the case. For example, the ratio of black to white of dishonorable discharges in the Air Force is over 3.6 to 1. In the Navy it is over 1.7 to 1.

It is significant to note that according to our study more than 22 percent of all black enlisted men discharged from the Marine Corps in 1972 received other-than-honorable discharges. That is almost one quarter of all of those discharged.

The other branches report less-than-honorable discharges for blacks as follows:

For the Navy it was 18 percent. For the Army it was 11 percent. For the Air Force it was 10 percent.

In order to put those statistics in perspective, the comparable rates for whites who received other than honorable discharges were as follows: for the Marines, 13 percent; for the Navy, 10 percent; for the Army, 6 percent; for the Air Force, 3 percent.

This study has already been shared with the Senate Committee on Veterans' Affairs and we would gladly make the complete study available to this subcommittee. Other groups such as the National Congress of Puerto Rican Veterans have made similar studies and have reached similar conclusions.

Hopefully, we have delved into the matter of those who served their country and were discharged under conditions other than honorable sufficiently to make our point. Those with bad discharges—whatever their race—deserve congressional consideration at the same time that consideration is given to those who refused to serve.

In ending, Mr. Chairman, I would like to point out that bad discharges carry with them a lifetime of social stigma, reduced economic opportunity and even diminished Government benefits. Based on our own experiences, we know that these limitations on minority veterans are passed on to their family members. A jobless veteran cannot find a home in a decent community to live in; he cannot send his children to a decent school, assure them of adequate and nutritious meals or provide the proper health that his family so desperately needs.

Is it really fair to punish a person—and his family—for years to come because of minor infractions made at an early age, especially when the majority of the infractions were of a questionable nature and they have been motivated and punished by discriminatory policies? We think not, and respectfully urge you to take legislative action to correct the injustices of the military separation system.

Thank you very much, Mr. Chairman.

Mr. KASTENMEIER. Thank you, Mr. Brown, for a very significant statement.

Furthermore, I apologize for not being able to reach you at 1:30 because of the witnesses held over from the morning hour. I understand you, as a result, are late for a meeting you had hoped to keep.

Mr. BROWN. Quite all right. This is much more important, Mr. Chairman.

Mr. KASTENMEIER. The study that you have referred to, is interesting. Those statistics are very interesting.

That goes beyond really the question of amnesty. That also goes to racial discrimination in the military.

I wonder, have you or a representative of your organization had an opportunity to testify before the Armed Service Committee in connection with their discharge program or their program of separation of military personnel?

Mr. BROWN. We have not testified before that body.

Mr. KASTENMEIER. You have not been asked to testify before them?

Mr. BROWN. We have not.

Mr. KASTENMEIER. Well, I don't know within which committee's jurisdiction this falls, but I do suggest that you have raised a very important issue and it seems to me the duty of the Congress to address itself to it. We won't detain you too long. I yield to Mr. Railsback.

Mr. RAILSBACK. I am very interested in your allegations about the coding. I believe you referred to an American Civil Liberties Union study? Was it a survey?

Mr. BROWN. It was a study connected with their project on amnesty which indicated the results of the coding system and that such a system did exist.

Mr. RAILSBACK. I really think that that is a most serious charge, if true, and I'm just wondering has the ACLU testified yet?

Mr. KASTENMEIER. As a matter of fact, testimony and supporting data on the question Mr. Brown has addressed himself to was offered on Friday and it has already been included in the record.

Mr. RAILSBACK. Yes; it seems to me that something like this goes against everything this subcommittee is trying to do as far as providing work opportunities for people that need to get work in order to stay out of jail.

Mr. BROWN. Mr. Railsback, I believe there have been admissions, even by the Defense Department, that the coding system was used. I think what has been said since that time was that employers had no means to decode and therefore had no means to find out what the coding system actually meant. Our best information is that this is not the case and that many of the larger employers in this country do have the means of decoding and therefore can see exactly what the codes mean.

Mr. RAILSBACK. Well, I want to thank you. I also think that possibly this particular subject matter might be taken up by at least one other committee that is concerned about the right of privacy and some of the other shared data that is made available to employers.

I am glad you brought this to our attention and I hope that we can do something about it. Thank you.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. I want to thank Mr. Brown for his testimony. It is very helpful. I won't detain you further from your appointment. Thank you very much.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman, and thank you, Mr. Brown, for appearing before us today. I too am interested in this coding question, which you brought forth. What kind of information would be included in such a coding system as you have mentioned?

Mr. BROWN. Well——

Mr. SMITH. I understand there is a coding system on an honorable discharge?

Mr. BROWN. Yes; that is correct. We assume that it has to do with personality traits, with conduct while in the military, with the ability to take direction and be supervised, with matters that have not ordinarily been made available to employers from the military. Therefore, we are requesting that congressional action be taken in this regard and requesting that employers no longer be given access to that information.

Mr. SMITH. One other question. Well, I agree with Mr. Railsback and I think that is something that is serious and certainly the Armed Services Committee ought to look into it. I hope they are doing it right now. If they aren't, I hope they begin immediately.

You state in regard to those who have been discharged with a less-than-honorable discharge that the limited discharge upgrading services now underway with this tedious review process, and so on, are totally inadequate and promise to do little in redressing the wrongs of the recent past.

I assume from that that there are some procedures for upgrading a less-than-honorable discharge now provided.

Mr. BROWN. Yes, that is correct. I think that the Defense Department and others have recognized the injustices done and have recognized that there have been discriminatory kinds of actions taken in giving these less-than-honorable discharges. And because of that admission and that recognition, they have come forth with the system that we have classified as inadequate.

I think one of the primary concerns about its inadequacy is that it requires initiation by the individual serviceman. Oftentimes the serviceman does not even know of the ability to clear his record, and that is one of the major problems here.

So we think that a much broader step needs to be taken than a step that allows only the wrong to be redressed by action taken at the initiation of the individual serviceman.

Mr. SMITH. Well, would you be in favor, for instance, of a project by the Defense Department, by the armed services, to get the word out to everybody, and also, if necessary, to change somewhat the upgrading process but to leave a review process there for individual cases?

Mr. BROWN. We would certainly be in favor of anything that would improve the system and get this blight off of the records of many military men. Quite frankly, it's been the minority group members of the military that have been disproportionately affected. Whether we would accept some kind of review, I think we would want to take a close look at what kind of review that would be, but we would be certainly glad to see any method established that would be used to improve the current system.

Mr. SMITH. Thank you very much.

Mr. KASTENMEIER. The gentleman from New Jersey.

Mr. SANDMAN. Mr. Brown, I think Mr. Smith has already gotten the answer that I was going to ask anyway, but for my own satisfaction, you are testifying at a hearing that has to do with amnesty, and of course, the position taken, as I understand it, by you is in favor of unconditional amnesty. Is that correct?

Mr. BROWN. That is correct.

Mr. SANDMAN. All right, at the same hearing you have brought up a very important point in which we are interested, but do I understand you correctly in believing that you are asking for an unconditional forgiveness of these things also?

Mr. BROWN. An unconditional forgiveness of which things?

Mr. SANDMAN. Of those discharges that are less-than-honorable.

Mr. BROWN. Well, we think, Mr. Sandman, that the statistics show on their face that there has been gross discrimination in the military justice system, and we think that unless someone can show us some kind of fair way of redressing those grievances, that we are forced into a position of asking for unconditional change.

Mr. SANDMAN. You mean a nullification of all of them?

Mr. BROWN. Well, first of all, we are talking about a certain era. We are putting this in the perspective of these hearings, and since the amnesty question has come up related to the Vietnam era, we are asking you also to look at an important issue that affects a great number of our constituents and that is the less-than-honorable discharges during that era, so we are limiting that request.

Mr. SANDMAN. One last question. I want to be sure I understand what you are saying.

I believe that something must be done on this codification problem that you brought up. I never even heard of it to be honest with you. I think it is terrible if it does exist.

Now, secondly, a better and faster review of these less-than-honorable discharges I think probably is in order because the proportions that you sight seem to be somewhat one sided.

Now, the important question, from what you just said, it appears that you believe that all of those discharges less than honorable during the Vietnam conflict should all be either downgraded or nullified. Is that correct?

Mr. BROWN. I think, Mr. Sandman, we are perfectly willing to look at a review process and participate in any way that we can in assuring that it is a fair process. We have not seen one yet. And because of the fact that we haven't, we are taking the position that it should be unconditional. We are not ruling out any subsequent discussions, any subsequent conversations about a kind of review process that would meet the needs that you expressed.

Mr. SANDMAN. Yes, but you are not hoping for any congressional action that is going to nullify every discharge less than honorable.

Mr. BROWN. I think that would probably be unrealistic, Mr. Sandman.

Mr. SANDMAN. Thank you.

Mr. KASTENMEIER. I might point out that the Defense Department will be a witness on Wednesday morning next, and perhaps counsel can communicate with them and let them know that they will be asked about this question. We will have questions for them on the points you raised, Mr. Brown.

Thank you for your testimony here.

Mr. BROWN. Thank you.

Mr. KASTENMEIER. Our next witness represents the Young Americans for Freedom. He is Mr. Jerry Norton of the national board of directors.

I see Mr. Norton's statement is brief so you may proceed to it, Mr. Norton, if you will.

TESTIMONY OF JERRY W. NORTON, YOUNG AMERICANS FOR FREEDOM

Mr. NORTON. Thank you. My name is Jerry Norton, and I am a member of the board of directors of Young Americans for Freedom. That is a nationwide organization of conservative and libertarian young people. I am currently a graduate student at Columbia University. I am a veteran and served in Vietnam as an enlisted man in artillery and information units of the First Air Cavalry Division. I received the Purple Heart and other decorations.

I hope you all have or will have a chance to read my written testimony this morning. This afternoon I'd like simply to briefly summarize that testimony and answer any questions you might have. Before I summarize, however, I would like to make one correction in the written testimony in page 4; the comma in the fourth line from the bottom after the word "individuals" should be deleted. It doesn't seem like an important change, but it is crucial to the meaning of that sentence.

Now, to summarize our testimony, which consists of refutations of four arguments in favor of amnesty and a presentation of what we see as the main argument against amnesty.

First, in our written testimony, we dispute the contention of some amnesty proponents that draft dodgers and deserters who opposed the war in Vietnam were right to do so. Though, perhaps, the morality of the war shouldn't be an issue in the amnesty debate, we recognize that in fact it has become an issue. We suggest that the Communists initiated the war in Vietnam, and that it was moral for the United States to help the South Vietnamese to resist them. Hence, we disagree that somehow draft dodgers and deserters deserve amnesty because they were right about the war. We don't believe they were.

Second, we note that many amnesty proponents tend to argue from numbers. That is, they say so many young people deserted or dodged the draft that America can't afford not to take them back. Our testimoney offers evidence that the numbers involved have been greatly exaggerated, and I might add, even if much larger numbers were involved, we still believe amnesty would be wrong in principle.

Third, in our written statement, we disagree with the amnesty proponents who frequently cite uniting the country as the main reason for amnesty. We point out in our written statement that it seems more logical to conclude amnesty would divide the country and aggravate polarization, considering the feelings of the American people on this issue.

Fourth, we reject the argument that there is precedent for unconditional amnesty or anything approaching it. In our written statement we go war-by-war back to war and find no historical amnesties that resemble what the bills before this committee would institute.

Finally, our statement indicates what we see as the major argument against amnesty. Amnesty would be yet another precedent where lawbreaking is forgiven. We suggest that all too often in recent American history violations of the law have been encouraged and have gone unpunished, if said violations were supposedly politically motivated. For example, the independent truckers strike violence, the Hearst and Murphy kidnappings, the illegal firemen's strike in New York, and I dare say much of what your parent committee is considering in actions of Presidential aides, were motivated or rationalized by the individuals involved on the basis of the idea that the individual can pick and choose the laws he will obey or disobey if he is acting in what he thinks is a "good cause."

I don't think we should do anything to contribute to that trend, which strikes at the heart of our representative system of Government.

Thank you. At this point I would ask that my written testimony be inserted in the record. I'd be happy to take any question you might have.

Mr. KASTENMEIER. Without objection, your entire statement in its entirety will be received for the record.

[The statement of Jerry Norton in full follows:]

TESTIMONY BY JERRY W. NORTON, NATIONAL BOARD OF DIRECTORS, YOUNG AMERICANS FOR FREEDOM

Four arguments are most frequently offered in favor of amnesty. We of Young Americans for Freedom would like to refute those four arguments, then offer what we see as the primary argument *against* amnesty.

I. "THE WAR WAS IMMORAL"

While some amnesty proponents claim that the issue of the war's morality is irrelevant to the amnesty question, to others it is a principle consideration. They say all or most Americans now realize that the war was a mistake, that those who fled the country to avoid serving in the war were right, and that those who mistakenly supported the war should thus ask the deserters and draft-dodgers for forgiveness, not vice-versa.

We tend to agree that this argument, right or wrong, should not be crucial to the amnesty question, yet we recognize that the public would probably interpret amnesty as an admission that U.S. policy in Vietnam was wrong.

For the record then, we want to note that North Vietnam and its Communist allies were responsible for the war. They attacked South Vietnam. They currently occupy a considerable portion of South Vietnamese territory which they use to continue their military and political campaigns. They have shown that the conflict was not "just a civil war" by their aggression against Laos and Cambodia. Their continued efforts to gain control of Indochina show that their attitude has not changed, and that the much decried "domino theory" was and is valid.

Nor was U.S. conduct of the war immoral. Even the December 1972 bombing of Hanoi, so intensely criticized by the opponents of the war, took only 1,318 lives, military and civilian, by the Communists' own count. That hardly squares with the atrocity charges made against the U.S., but it does match the U.S. description of the bombing as precision aimed at military targets.

In contrast, the Communists have consistently followed a policy of terror against civilians and of execution of political opponents. In one instance alone, the occupation of Hue in the Tet Offensive, they cold-bloodedly executed more than twice as many South Vietnamese civilians as all of the casualties inflicted in the so-called "saturation bombing" of Hanoi.

Thus, any argument that amnesty should be granted because America was on the wrong side in the Vietnam war, or used immoral tactics, should be rejected.

II. "SO MANY YOUNG MEN"

This pro-amnesty argument from numbers asserts that so many men deserted or dodged the draft that America simply cannot get along without them. As substantiation for this, the figure for total desertions during the Vietnam war is given.

Such statistical "evidence," however, fails to mention that more than 90% of that total returned to military control, usually of their own volition. Hence, in late 1972 only 32,557 of the 423, 422 men who had deserted since mid-1966 were still at large.

The pro-amnesty people also like to depict all these men as motivated by their consciences and heart-felt objections to the Vietnam war, when most are motivated by other factors such as family problems, individual difficulties with their units, simple dislike for the military life, or nothing more sinister than a decision to take an extended and unauthorized vacation. Such factors may explain why only 5% of deserters in foreign countries, according to the Department of Defense, have made political or anti-war statements.

It should also be noted that while amnesty propaganda speaks of many thousands of men "in exile" overseas, the Department of Defense knew in late 1972 of only 2,525 deserters abroad and the Department of Justice only 2,760 draft-dodgers abroad—and only another 1,700 draft-dodgers believed to be in the U.S.

Finally, while pro-amnesty propagandists discount the above statistics, saying many draft-dodgers were never indicted and claiming that as many as 40,000 to 100,000 linger in Canada, immigration statistics show that if every American male in the military age bracket who went to Canada to stay between January 1965 and January 1972 were assumed to be a draft-dodger or deserter, the grand total would still be less than 17,000.

III. BRINGING THE COUNTRY TOGETHER

A central pro-amnesty argument is that amnesty would heal the divisions left in the country by the Vietnam war. It seems equally plausible that amnesty would polarize the country more, not less.

For example, Americans have made heroes out of the former prisoners-of-war. Would the public, not to mention the P.O.W.s themselves, greet returning draft-dodgers and deserters with adulation or contempt?

Similarly, there are millions of Vietnam veterans. Though war opponents among them have been vocal, few would argue that such radical groups represent more than a small minority of veterans. As for the rest, would they not resent the return of those who avoided service while they risked their lives and while many still bear the scars and wounds of war? How will the relatives of those men react, especially the relatives of those who lost their lives? While there are no doubt exceptions in each category, it seems reasonable to assume that most would not willingly accept amnesty.

Polls of the public have consistently shown that Americans at large oppose universal amnesty, and especially oppose amnesty for deserters. Thus, how amnesty would "bring the country together" is hard to understand.

IV. THE HISTORICAL PRECEDENT

A favorite argument of pro-amnesty forces is that amnesty is in a great American tradition, that there have been many amnesties after American wars. Such an argument is without foundation; the pro-amnesty forces call for a universal amnesty which was never granted in the history of our nation.

During the Civil War President Lincoln on several occasions offered amnesty to Union deserters, but the amnesty was always conditional. The condition was usually that the deserters had to return to military duty and forfeit a certain amount of pay. That is considerably different from universal amnesty. There was no amnesty for those violating the draft laws.

Amnesty with exceptions was offered by Lincoln to Confederate soldiers, but that obviously has no parallels with the current situation. Confederate soldiers were just that, soldiers, not individuals who refused to fight. They were part of the army Lincoln was trying to defeat, which made it in his government's interest to encourage them to desert and deplete the enemy's forces. The Confederates also had to take an oath of loyalty to the Union, an explicit admission that they had been wrong.

After the war President Johnson offered amnesty for Union deserters who returned to their units to serve out their military duty. There was no amnesty for draft law violators. There were various amnesties for Confederate soldiers (again note the lack of parallel with those who want amnesty today), but there was no complete amnesty even for them until 1898.

There was no amnesty after the Spanish American War.

Fifteen years after the end of World War I President Roosevelt pardoned 1,500 individuals who had been convicted, and served their sentences, of violations of the draft and espionage laws. President Coolidge granted amnesty to about 100 men who deserted their units after the armistice. Again, wartime deserters received neither pardons or amnesty.

After World War II President Truman set up an amnesty review board that looked at individual cases and pardoned 1,523 of 15,803 draft evaders. There was not even this very limited amnesty for deserters.

There was no amnesty after the Korean War. In December of 1952 President Truman granted amnesty for those who deserted between the end of World War II and the outbreak of the Korean War, *peacetime deserters*. Moreover, all had been *convicted* of deserting, which meant they had served some prison time.

V. THE ARGUMENT AGAINST

Having examined the main arguments for amnesty, and the problems with them, we turn to the main argument against. To permit amnesty for those who refused service in Vietnam is to set a precedent that says, "If you think a law is immoral, break it, because you may very well find that society changes its mind, forgives you and doesn't punish you." More simply it says, "You were completely right to disobey the law."

As conservatives, we in Young Americans for Freedom believe in individual liberty, yet we are also aware that the very concept of government becomes meaningless if individuals are free to pick and choose those laws they will obey and those they will disobey. This is self-evident. While those who have decided that the Vietnam War was totally immoral and indefensible may brush this argument aside, I suggest they ask themselves if they so readily forgive a white racist who follows his conscience and blows up a black church? Or on a more mundane level, excuse those whose consciences told them a given government program was immoral and therefore refused to pay the taxes to support it? (In this case we as conservatives would be paying very few taxes indeed.) To permit this is to create government of whim, not law.

Amnesty would make a mockery of law and government. It is one thing to disobey a law because one feels it is immoral—one can conceive of circumstances where conservatives might do just that—but it is quite another to expect the society that made the law not to punish one for that disobedience. Martin Luther King, Thoreau and Ghandi expected to go to jail when they violated the law; their concept of civil disobedience was not that of those who request amnesty, nor could it be if we are to have an orderly rather than anarchic society. The choice is not between liberty and order, but between having both or neither.

Mr. KASTENMEIER. You mentioned the Hearst kidnaping.

Mr. NORTON. Yes; as I say, the Hearst kidnaping is an example of people violating the law because they think they are motivated by something higher, by their conscience, which therefore, justifies their violating the law. I think that is part of a general trend in American politics in the last decade.

Mr. KASTENMEIER. It appears to be, given your other statement about the questions raised by our parent committee's proceedings in regard to Watergate.

Mr. NORTON. Yes.

Mr. KASTENMEIER. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I wonder how you feel about some kind of conditional amnesty. I guess actually we have three different kinds of bills before us. First, we have a simple resolution that speaks out against any amnesty and second, we have the absolute amnesty and third, we have some conditional amnesty bills. How do you feel about the conditional amnesty?

Mr. NORTON. Well, I can't speak for the organization as a whole on those because our stand has been primarily against universal amnesty without considering those alternatives. I would say personally that I would favor, and I think some other Young Americans for Freedom would favor conditional amnesty of the type in some of these bills where the individual can choose to give 2 years in the military or serve in a volunteer domestic agency although I think I would personally want to see that service longer. That is, if somebody was going to take the option of serving in Volunteers in Service to America for something like that, I would want him to spend a longer time in that agency than an individual would spend in the military.

I think there are circumstances under which I might favor conditional amnesty and I think probably none of us would object to a review board to review individual hardship cases. But we are very much opposed to unconditional or universal amnesty.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Mr. Norton, how many members do you speak for? How many people?

Mr. NORTON. We have 60,000 members and 400 chapters and they are collge and high school people under 40.

Mr. DRINAN. What do you mean by a member? Do they have to pay dues?

Mr. NORTON. That is right.

Mr. DRINAN. You have their names somewhere?

Mr. NORTON. Do I have what?

Mr. DRINAN. They get literature? They are formal members?

Mr. NORTON. Yes, sir.

Mr. DRINAN. Has the organization taken a stated written position on this matter?

Mr. NORTON. Yes, sir. We passed a resolution at our national convention here in Washington last August.

Mr. DRINAN. Do you have a copy of that or does it say anything that you haven't?

Mr. NORTON. No, sir, I don't have a copy of that.

Mr. DRINAN. Last August? Do you think that anything has changed in the few months that have gone by since then?

Mr. NORTON. No, sir.

Mr. DRINAN. Do you think anything will ever change?

Mr. NORTON. Oh, I think something might ultimately change.

Mr. DRINAN. The American Legion said that it would be premature to have amnesty. Would the Young Americans for Freedom agree with that?

Mr. NORTON. I'm not sure whether it would or not, Congressman.

Mr. DRINAN. You what?

Mr. NORTON. I'm not sure whether it would agree with that statement or not, Congressman.

Mr. DRINAN. You say that it seems possible or plausible that amnesty would polarize the country. Well, why is the country so polarized?

Mr. NORTON. I think the country is naturally polarized between people with divergent viewpoints about the Vietnam war and with divergent viewpoints about anything. I think you can look at any American political election, but specially the last one, where at least as people saw the candidates or viewed the candidates or thought they understood the candidates' positions, there was significant difference between them. In that sense they are politically polarized.

Mr. DRINAN. All right, if you are enunciating the Young Americans for Freedom position, you are continuing that polarization because you say that on page 1 that "North Vietnam and its Communist allies were responsible for the war. They attacked South Vietnam. They currently occupy a considerable portion of South Vietnamese territory, which they use to continue their military and political campaigns."

Most people don't agree with that in America or at least half or maybe more do not.

So do you want a stalemate so that we continue the polarization or what? How are you going to defuse the situation?

Mr. NORTON. First, I'm not sure exactly what the question is, but in response to your statement that half of the American people don't believe what we stated about Vietnam, I would say probably half or more of the American people do believe what we stated about Vietnam. What they don't believe is that it is worth the U.S. involvement.

In terms of aggravating polarization, what I am suggesting in my statement is that for Congress to pass amnesty at a point when the vast majority of Americans I think are very much against it, would increase resentment and would——

Mr. DRINAN. That is not what recent polls say.

Mr. NORTON. That is what the polls I have seen say, especially in regard to desertion.

Mr. DRINAN. Well, you don't read very much then.

Mr. NORTON. Maybe we don't read the same things.

Mr. DRINAN. At the bottom of page 3, do you think that that defuses polarization by saying, "the war opponents among them have been vocal, few would argue that such radical groups represent more than a small minority of veterans?"

Mr. NORTON. Sir, I very much wanted to make the statement and the point that veterans like myself have resented groups like the Vietnam Veterans Against the War, who even in their own statements of membership, which I think are exaggerated, don't claim to represent the majority of veterans.

Mr. DRINAN. Why do you say that they are radical groups and yet you are a nonradical?

I haven't met a single veteran, other than you, who justified this war.

There were 2½ million people who went there and back, and I haven't met a veteran who is for this war. And I talk to them. I am astonished when most everyone is against that.

So that doesn't help the situation any.

I appreciate your statement, Mr. Norton, and your viewpoint, but in all candor, it doesn't help us. This is just rhetoric. And frankly, the American Legion is more constructive than this. They say that it is premature, but you just go on to say amnesty would make a mockery of law and government.

I just don't think that is a worthwhile contribution.

Mr. NORTON. Thank you, Congressman; you are entitled to your opinion, and I hope I am entitled to mine.

And I think it would be appropriate to say you must not have talked to many veterans if the only ones you met are invariably against the war.

Mr. KASTENMEIER. I recognize the gentleman from New York, Mr. Smith.

Mr. SMITH. Mr. Chairman, I would like to thank Mr. Norton for bringing this point of view here. I have no questions.

Mr. KASTENMEIER. The gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. I have no questions, but I do want you to note that one member of this committee has a poll which is similar to yours. The half million people that I represent, in an at-large questionnaire, 91 percent opposed unconditional amnesty.

Mr. NORTON. Thank you.

Mr. KASTENMEIER. Are there any other questions?

Mr. Norton, we are glad to have had you here today and have heard your viewpoint.

The next witness I would like to recognize is a gentleman who has appeared before this subcommittee and indeed many subcommittees of the Judiciary Committee many times over the past years. Next, we have the distinguished lawyer from Washington, Joseph Rauh, Jr., vice chairman, Americans for Democratic Action.

Again your statement, Mr. Rauh, is brief, and you may proceed.

TESTIMONY OF JOSEPH RAUH, JR., VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION; ACCOMPANIED BY LYNN PEARLE

Mr. RAUH. Thank you, Mr. Chairman. I will put the statement in the record and simply summarize in deference to your request and also in the hope that possibly, if I save a small amount of my time, it can go to one of the draft resisters who hasn't had any time. There is a suggestion that Mr. Walden Collins of the National Council for Universal and Unconditional Amnesty could use 5 minutes if I would save it, and I will try to do so.

At the outset, I would like to thank this committee for holding these hearings. It is the best thing that has happened to amnesty thus far, and we are grateful to the committee for holding these hearings.

I speak, as the chairman said, for the Americans for Democratic Action, and with me today is Lynn Pearle, its legislative representative.

The points I would make in summary are as follows. First, Americans for Democratic Action calls for granting general unconditional amnesty to draft resisters and deserters, and to those who received less-than-honorable discharges for their opposition to the Indochinese war.

Second, in supporting that proposition, we support the bills that Representatives Abzug and Dellums have introduced for unconditional general amnesty.

Third, we call attention to the long and distinguished record and history of our Nation in granting amnesty.

If there is any one clear principle, it is that at the end of each war, we try to wipe the slate clean.

Fourth, I think President Nixon has used the word "amnesty" as meaning "forgiveness." I would have thought that the President had enough advisers to know that amnesty doesn't mean forgiveness. It doesn't have anything to do with forgiveness.

They at least ought to know over there at the White House to look at the root words. Amnesty comes from amnesia, which means to forget. No one here is asking for forgiveness for anybody. I'm not asking for forgiveness for the people on my side of the war issue, nor am I willing to forgive those who were in favor of the war. The point is that this country needs to forget the war. We need to put it behind us. We need to get together.

And I respectfully suggest that by trying now to forget what went on in the past, to bind up the wounds of this country, that probably is the most important thing we can do.

Fifth, Americans for Democratic Action opposes conditions on amnesty because, if you put conditions on amnesty, you are implying guilt. The time has come no longer to imply guilt, no longer to imply that things were wrong, but to try to do a job of forgetting.

Now, the final and most important point I have to make is not in my statement.

I read the testimony of the Deputy Assistant Attorney General of the United States before this committee, and I'm shocked by that testimony. His suggestion—the suggestion of an administration that has done the illegal things that have come to light—that it would be illegal for Congress to grant amnesty, is one of the most outrageous legal positions that the administration has taken.

I couldn't believe that the story to this effect in the Washington Post on Saturday was true.

I didn't believe it until I just read the written statement that Mr. Ulman presented to this committee. And I thank goodness that the committee is composed of distinguished lawyers.

There is just nothing to support the proposition that Congress cannot pass an amnesty law. Indeed, the Constitution makes perfectly clear that Congress can pass an amnesty law.

It is true that the President has a power of pardon and there would be serious questions if Congress tried to limit that power of pardon. But certainly, Congress' power to raise and support armies, to provide and maintain a Navy, to provide for organizing, arming, and disciplining the militia, Congress' power to make all laws necessary and proper for carrying into execution the foregoing powers, is perfectly clear, and it is equally clear that Congress can thus pass a general amnesty law.

Indeed, the Supreme Court made it clear that amnesty was a general law. This is a sentence from *Burdick* v. *United States*, 236 U.S. 79, back in 1915, which reads:

> Amnesty is usually general, addressed to classes or even communities—a legislative act, or under legislation, constitutional or statutory—the act of the supreme magistrate.

And so there is no question that Congress can pass this law. What would be questionable would be the Hogan and the other resolution which tries to limit the President's power.

Amnesty is like many other powers in the Constitution; a joint power of the President and Congress.

As long as one does not try to hinder the other, there is no reason that both can't go forward with full plenary power.

Our statement was prepared before the Government testified and is thus not directed to the legal side. But when I read about this in the paper, it seemed to me that the most important thing to do was to come up here and try to say something about the absurdity of the suggestion that Congress can't act in this field. I had never heard that suggestion before. I have never felt that anybody could propose it.

But now that the Government has done this, is seems to me that the first thing this committee ought to do is lay that canard to rest. And I strongly urge whatever else you do—and from the bottom of

our hearts in the Americans for Democratic Action we urge amnesty—but whatever else you do, let's lay to rest that canard that the Congress cannot act in this field.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Thank you, Mr. Rauh.

Your entire statement will of course be placed in the record.

[The statement of Joseph L. Rauh, Jr., in full follows:]

STATEMENT OF JOSEPH L. RAUH, JR., ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION

I am Joseph L. Rauh, Jr., a vice-chairman of Americans for Democratic Action. With me is ADA's legislative representative, Lynn Pearle. I appear here today to express ADA's position for general, unconditional amnesty.

ADA's policy statement on amnesty calls for "granting general, unconditional amnesty to draft resisters and deserters and to those who received less than honorable discharges for their opposition to the Indochinese war." ADA therefore supports H.R. 236, H.R. 3100 and H.R. 5195 introduced by Reps. Bella Abzug and Ronald Dellums. These bills would grant general and unconditional amnesty and restore full civil, political and property rights to all those who have been prosecuted for non-compliance with any requirement of military service during the U.S. involvement in Indochina. They would also grant amnesty to civilians arrested for nonviolent acts of protest against the war. H.R. 10980, introduced by Rep. Paul McCloskey, would grant amnesty to military resisters of the Indochina war and ADA supports it. However, we prefer the Abzug-Dellums approach granting universal amnesty.

ADA believes amnesty should be extended to all those who have suffered or face criminal or administrative penalties for nonviolent acts of evasion or resistance to the draft, to the military, or to the war in Indochina.

Amnesty is not unprecedented. It has a long and distinguished tradition in American history. After almost every military engagement in our history, whether at home or abroad, this country has extended amnesty to those who found themselves in conflict with national authority over these wars. Amnesties can be declared in the United States by Congress, by the President acting with the authorization of Congress, or by the President alone. Thirty-four amnesties have been proclaimed to date by 13 American presidents.

Amnesty is the discretionary act of a sovereign state which decides to abstain from prosecuting groups of citizens who have resisted obedience to the law for moral or political reasons. It does not mean "forgiving." Amnesty is neither a judgment of condemnation nor an act of condonation. Its root word is related to amnesia, and it means "to forget." Amnesty concerns the law's ability to undo what it has done in the past. To forgive a violation is to pardon. But amnesty is to forget, to erase, to blot out in recognition of a greater interest—in this case the reconciliation of our nation.

The case for amnesty is especially strong in relation to the Indochina war, an unprecedented war that went completely outside the traditions as well as the law of this nation. With the exception of the Civil War, after which the entire Confederacy was amnestied, no other conflict in our history has been as divisive or produced as many acts of protest as the Indochina war. Draft resisters and military deserters were guilty of law-breaking, but we are all aware of the number of our men who refused to serve because they saw the Indochina war as immoral and illegal. For these men, the decision not to serve was a matter of conscience.

Millions of other Americans also have adjudged the war in Indochina to be immoral and illegal. The 1964 presidential election was won by Lyndon Johnson on a no-war platform, and the 1968 election was won by Mr. Nixon who clearly pledged to end the war. Neither pledge was kept. Congress never declared war, yet continued to authorize personnel and funds for it.

Those who made the decisions to enter and escalate the war in defiance of public opinion broke both moral and constitutional law. To prosecute those whose offense was refusal to serve in the Vietnam war, while failing to prosecute those government officials responsible for American involvement in this tragic conflict, is to permit the application of a double standard or justice. Amnesty would help eliminate this injustice.

Amnesty could also contribute to the political strength of this country. A society can remain free only if political dissent is permitted. A free society does not so much make a concession to political opponents when it grants amnesty as it contributes to its own strength by ensuring the continuance of vigorous democratic debate. Granting amnesty to Vietnam war resisters would restore to useful citizenship those who resistance helped us discern the true nature of our country's Indochina involvement.

ADA cannot support conditional amnesty legislation such as H.R. 2167, H.R. 10979 or H.R. 13001. Imposing conditions for amnesty suggests guilt on the part of those who are amnestied, and is a perversion of both the meaning of service and the purpose of amnesty. Many war resisters—viewing the imposition of conditions as punitive in nature—would never accept conditional amnesty. These individuals feel that in obeying a higher moral law they did nothing that deserves punishment. Furthermore, we feel those affected have already been punished: Many have been brutalized in prisons; others have spent years in hiding; others have been separated or ostracized from their families.

Most of us would like to forget the Indochina war. But the over half million men presently suffering some kind of legal disability—draft resisters, deserters, those receiving less than honorable discharges—are living reminders of the war. The Vietnam war will never be over for this country until the final step of granting amnesty to these men is taken.

Unfortunately, those leaders who have been most verbal about getting the war behind us have refused to take this final step. In his press conference last January 31, 1973, President Nixon asserted: "Amnesty means forgiveness. We cannot provide forgiveness for them . . . If they (the deserters) want to return to the United States, they must pay the penalty."

In sharp contrast, after the Civil War, President Andrew Johnson proclaimed amnesty for all those who had engaged in the conflict, stating:

A retaliatory or vindictive policy, attended by unnecessary disqualifications, pains, penalties, confiscations and disenfranchisements, now as always, could only tend to hinder reconciliation among the people and national restoration, while it must seriously embarrass, obstruct and repress popular energies and national industry and enterprise.

The general thrust of Andrew Johnson's statement is just as valid today as it was a century ago.

What better way for President Nixon to achieve his stated purpose of "bring(ing) us together" than to support amnesty for the hundreds of thousands of men who remain outside our society because of this war. What better way to help restore some shred of confidence in this crumpled administration than for its leader to be strong enough and self assured enough to be compassionate toward others. Amnesty would be a vehicle for a showing of national strength and unity, so tragically undermined during our Vietnam years and so painfully absent during the ordeal of Watergate.

The possibility that President Nixon will ever grant amnesty, however, seems rather remote, unless the President comes to realize that amnesty means to forget, not to forgive, and decides to act in the national interest.

ADA urges Congress to put this war behind us once and for all. Passage of general and unconditional amnesty legislation would introduce a measure of compassion and justice into the tragic record of our experience in Vietnam.

Mr. KASTENMEIER. I am grateful to you for addressing yourself to that question even though the Deputy Assistant Attorney General was less than certain on the issue. He stated "The subject of amnesty is one in which views are not entirely in agreement, but it is quite difficult to say that Congress has the constitutional power." So, in other words, he was not either very precise or absolutely convinced in his own mind. But he did certainly raise the specter and I will personally ask for a staff memorandum on the question. This will be for the purpose of the subcommittee members who are interested in the question of the constitutionality of Congress in this matter.

I rather personally share your position, but I think we must nonetheless explore it fully and develop a paper, which is to the issue.

I yield now to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I want to thank Mr. Rauh and say that I was going to ask him about the legality of congressional amnesty but he has gone into that in some detail. I shall pass for now. Thank you.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. Thank you very much. I wonder if you want to comment on the advisability of the board? You have at least in principle endorsed H.R. 236 and 3100, but both of these provide for a board, as you know, in section 6, No. 1, which talks about violations that were in a substantial part motivated by the individual's opposition against the war, protesting against the war, and so on.

How do we get around this?

The individual seeking amnesty has to send his papers to somebody and who should that somebody be?

Mr. RAUH. Let me understand, Congressman Drinan. As I understand it, H.R. 236 and the other similar bills, the War Resisters Exoneration Act of 1973, they first grant a general amnesty on draft resistance and on desertion. And the provisions in section 6 deal—and if I am not correct, please correct me because I don't claim to be as familiar with the actual bills as you gentlemen are—only deal with other Federal laws and with State or local laws where crimes may have been committed in substantial part motivated by opposition to the war. So that this would be, if I understand it correctly, this would be the minor side of it. The major side of the bills would be the general amnesty voted by Congress. The minor side would cover those people who had done other things that were in opposition to the war.

It seems to me that this is a pretty good compromise. It might be difficult to create a general amnesty for all those circumstances because the situations might be so varied. So I rather support what seems a compromise, namely, the general amnesty for draft resistance and for desertion, but some board to deal with other crimes more unusual and more subject to mixed motivation and for that reason we do support section 6.

Mr. DRINAN. Is it your understanding that this particular board would process all of the necessary papers of those who have to apply to somebody to get the general amnesty, which is guaranteed by this bill?

Mr. RAUH. No, sir. I read the statute to be exactly different. I read the statute that under section 4, the amnesty is automatic if you violated one of the listed laws.

Section 6 only would come into play if you were not a violator or a potential violator of one of the laws listed in section 4.

So I would think section 6 is a useful addition to section 4, but not a limitation.

Mr. DRINAN. All right, do you have some differences with either of these bills? I know that you prefer this bill over the other. Would you have any suggestions as to how we can, from your point of view, improve these two bills?

Mr. RAUH. I don't feel I'm qualified, sir, as I have not made an adequate study of the bills. All I can say is the bills go along the general lines of unconditional amnesty that I believe in. If it were the desire of the committee, we could try to do the kind of legal job

that would be necessary to suggest possible ambiguities. My feeling is that a first rate job of draftsmanship was done here without saying that everything is perfect.

Mr. DRINAN. I think that any legal input would be very good because I'm certain that the military along with a lot of other people would say that this individual was not motivated by anything conscientious and that this was really unrelated to anything to do with the war and in some cases I suppose they could make out a case.

You also said that both have equal power, namely the Congress and the Executive. Somebody said that we had concurrent power.

Mr. RAUH. I used the word "concurrent," too, or I meant to. I would think that the President could grant a general amnesty. I would also believe that Congress could grant a general amnesty although the President's veto power does come into play in legislation. So obviously the President has two powers: he has the constitutional pardon power and he has the constitutional veto power over Congress. But assuming now that there was a congressional amnesty and the President's veto power was either not exercised or was overridden, I would say that the concurrent power of Congress there was plenary in the sense that you could act in the field.

The one thing Congress apparently can't do, if you look at the cases, is limit the President. Congress can't say that a Presidential pardon can't be used, as it tried in one situation after the Civil War and then the Supreme Court knocked that out. I don't think Congress could say to the President, you may not grant amnesty.

Mr. DRINAN. That is not our problem at the moment.

Mr. RAUH. There are a couple of resolutions to that effect. It is funny, but here you have Mr. Hogan's resolution and the other resolution and here you have the administration talking about constitutionality when the only real constitutional question comes from their own crowd.

Mr. DRINAN. Thank you very much.

Mr. KASTENMEIER. On that point though, my recollection is these are only resolutions, that they don't presume to have the power to override the President's exercise, and so they are meaningless.

Mr. RAUH. I stand corrected, sir. They are either meaningless or unconstitutional. I'm willing to take either one.

Mr. KASTENMEIER. I think the former is the case.

Mr. RAILSBACK. Would the Chairman yield?

Mr. KASTENMEIER. I yield.

Mr. RAILSBACK. I just want to say that it is my recollection, however, that the Department of Justice also questions the validity of the Hogan resolution as well.

Mr. RAUH. If that is correct, I am in bad company.

Mr. KASTENMEIER. I yield to the gentleman from New York.

Mr. SMITH. I thank the Chairman. I want to welcome Mr. Rauh here and thank you for your statement.

Mr. Rauh, I would say that your statement about the constitutionality of the Congress enacting some amnesty legislation jibes correctly of course with the ACLU's same position. But I personally thought that the Assistant Attorney General made a pretty good case the other day of the fact that it is at least controversial whether we

have the power or not. But in your opinion there is not controversy at all and it is absolutely clear that we do?

But I would like to say I am glad that the chairman is going to have a staff memorandum made so that we can really look into it.

Thank you.

Mr. KASTENMEIER. The gentleman from New Jersey.

Mr. SANDMAN. Mr. Rauh, if I understand what you have said, you not only advocate unconditional amnesty, but is it true in your statement you also advocate the nullification of all discharges of less-than-honorable?

Mr. RAUH. That is not exactly correct, sir. Let me read it again because I want to make clear precisely what I said. And since I read our position earlier, I can be precise.

We believe in amnesty. We believe in Congress granting general unconditional amnesty to draft resisters and deserters and to those who received less-than-honorable discharges for their opposition to the Indo-Chinese war.

There may be less-than-honorable discharges for many, many other reasons. ADA took no position on that.

I find there are some real difficulties with the less-than-honorable discharges for these other reasons. There has been a great deal of opposition to some of the less-than-honorable discharges and indeed you heard the Urban League representative tell of some of the racial problems that are involved. But that was not the position that we took.

The position that we took was much narrower. We oppose less-than-honorable discharges for opposition to the Indo-Chinese war. And I just want to make it clear that I have some strong feelings of empathy towards those who are worried about less-than-honorable discharges beyond that, but we took a more limited position, sir.

Mr. SANDMAN. Well, if this is the principal reason used for some of the things for which this less-than-honorable discharge was granted, I would assume that your position would be for the full nullification of that, wouldn't it?

Mr. RAUH. Yes; for the nullification of less-than-honorable discharges where a substantial motivation for the discharge was opposition to the Indochinese war, yes, sir. You would be correct if you said that.

Mr. SANDMAN. Do you know of any time in America's history where that was ever done?

Mr. RAUH. No; I don't, sir. But I don't know of any time in American history where you had opposition to the war similar to this except in the Civil War. As far as I know, the amnesty after the Civil War by President Johnson was very broad. Whether it covered exactly this point, I am not certain.

I just remember reading the history books and reading that President Johnson's amnesty was one of the broadest we ever had.

Mr. SANDMAN. Yes; but his was conditional as was Lincoln's and all of the other President's. He required a going back to their troops within 60 days and he required an oath of allegiance to the Government of the United States.

Now, do you buy that part of his condition?

Mr. RAUH. I'm sorry. I didn't hear that, sir.

Mr. SANDMAN. The conditions set forth by Lincoln as well as Johnson required two things: one, that they go back to their troops within 60 days and second, that they pledge allegiance to the Government of the United States.

Now, would you buy those conditions today?

Mr. RAUH. I think they would be a mistake today when we are trying to bind up all the wounds. It may have worked then, I can't say but——

Mr. SANDMAN. Did you say that would be a mistake?

Mr. RAUH. Yes; I did, sir.

Mr. SANDMAN. Let me say as a hypothetical, let's assume that we pass a law that only required a public pledge of allegiance to the Government of the United States. Would you buy that as a condition?

Mr. RAUH. I think that would be a mistake although I can understand it.

Mr. SANDMAN. Do you think it is a mistake to pledge allegiance to the Government of the United States? Is that what you said?

Mr. RAUH. You are using your words. You can use them all you want, sir, but you can't put words in my mouth. I have been a lawyer longer than you have.

Mr. SANDMAN. But did you say that or didn't you? Yes or no?

Mr. RAUH. Don't act like you are Clarence Darrow. You are not. I will tell you exactly what my position is.

I think it is a mistake to single out anybody in America for a pledge of allegiance. I would give a pledge of allegiance anywhere where a general pledge from everybody was required. Right now if you want to have a pledge of allegiance in this room, I will be the first to stand up and give it. But when you talk about a particular group and single them out, you are doing something that really hurts the unity of this country. And the point is, you are singling people out as though they are not faithful to their country. And I say don't single out any group as being less faithful to their country than anybody else.

Mr. SANDMAN. Let's explore that. Of these thousands that are today in Canada and Sweden, there happens to be several millions of us here in this country that have some question about their responsibility to this Government. Do we not have a right to ask them, if we pass an act of amnesty, will you publicly pledge allegiance to the Government of the United States? Would that be a fair law?

Mr. RAUH. Absolutely not because you are singling them out and——

Mr. SANDMAN. I have no further questions.

Mr. RAUH. Well, let me finish, you know, you don't like the answer so you want to cut it off.

Mr. KASTENMEIER. You may finish, of course.

Mr. RAUH. Thank you, sir.

It is because you are singling out a particular group that I would oppose it. I am for a pledge of allegiance. I would be happy to give it, as I said, right now. But you can't single someone out and say that because you did something wrong, you must give a pledge of allegiance when, in fact, they have nothing to be penitent for.

Mr. SANDMAN. Well, when they did not respect the law of the country, they did something against their allegiance to the country, did they not?

Mr. RAUH. I don't think they did anything more than——

Mr. SANDMAN. Well, you are entitled to your opinion.

Mr. RAUH [continuing]. Against the Constitution than you did, sir, when you as a hawk supported this war.

Mr. KASTENMEIER. If there are no other questions of the witness, I would like to express the gratitude of the committee for your appearance today. But I would like to, notwithstanding your offer of generosity of other prospective witnesses, respectively decline to grant that wish. We have a number of witnesses who must be heard from, and it must be in regular order.

Nonetheless, we are grateful to you for your appearance here today.

Our next witness is law professor Harrop A. Freeman, representing the Friends Committee on National Legislation, and Raoul Kulberg, Peace Committee of the Friends Meeting of Washington.

Gentlemen, we are under time pressure today so we are going to ask you to be as brief as possible. If you can summarize your statements for us, we would appreciate it.

I believe, Mr. Kulberg, your statement is relatively brief. You may proceed if you wish.

TESTIMONY OF HARROP A. FREEMAN, FRIENDS COMMITTEE ON NATIONAL LEGISLATION; ACCOMPANIED BY RAOUL KULBERG

Professor FREEMAN. I am Harrop Freeman, professor of law at Cornell and a member of the Friends Committee on National Legislation. I would like to have the statement and the attached statements of the various meetings of the Religious Society of Friends throughout the country, which are attached to the statement, placed in the record.

Mr. KASTENMEIER. Without objection they will be so received.

[The statement of Harrop A. Freeman with attachments follows:]

TESTIMONY OF HARROP A. FREEMAN ON BEHALF OF THE FRIENDS COMMITTTEE ON NATIONAL LEGISLATION IN SUPPORT OF UNCONDITIONAL AMNESTY

I am Harrop A. Freeman, Professor of Law at Cornell University and a member of the Policy Committee of the Friends Committee on National Legislation of Washington, D.C., on whose behalf this testimony is being presented. The Friends Committee on National Legislation does not purport to speak for all Friends since the democratic organization and ideals of the Society of Friends make this impossible. But even on tihs controversial and emotion-charged issue we have found considerable unity. A copy of a statement approved by our General Committee on February 21, 1972, is attached at the end of my testimony, along with statements from a number of other Friends' bodies.

We commend the chairman and members of this subcommittee for calling this series of public hearings on this issue. This is a matter of importance not only to the young men involved but also to their families and friends and the general public.

We support the intent and purposes of those House bills now under discussion such as H.R. 236, H.R. 3100, and H.R. 5195, which provide for general and unconditional amnesty for all who may be deemed to have violated United States laws with regard to the war in Indochina. For their 300-year history Quakers have been known for their opposition to war, their services for harmony and reconciliation for all people. These services have consistently been furnished without asking who is right and who is wrong in a conflict, as a means of binding up the wounds of conflict, furthering reconciliation between opposing parties and permitting men to assume tasks for the future as one family of humanity. It is this same moral imperative of reconciliation that demands the enactment now of full and unconditional amnesty.

Perhaps at no time in its history has this nation been so divided and in need of reconciliation. Not only are we divided party-to-party, age group-to-age group, and class-to-class by the most unpopular war and the most pervasive government scandals in our history. But we are divided within groups, unable to attract good candidates, unclear in the laws needed, unable to inspire voluntary efforts to solve our energy, inflation, food, and other crises. If there is one single thing we need for America it is a central and reconciled people.

I hesitate to pose as an authority on the legal question of amnesty, but I am the first person in over fifty years to research the issue and publish the definitive law review article, "Amnesty Today," in 1971 Law and the Social Order 515 (incidentally alongside an article by Sen. Barry Goldwater on "The President's Warmaking Power"). As that article points out, the ancients well understood the desirability and function of amnesty. Because of the bitterness and legal penalties attached to political opposition or revolt a large segment of the public (often the most politically knowledgeable) would be barred from public office and service. Because such division deprived society of some of its best minds it was desirable that society grant amnesty to all previous political offenders. This was done by the law declaring (as it often does by statutes of limitations) oblivion or forgetting of these offenses. What was intended was not "forgiveness" which would recognize that the person had in fact violated law but was in mercy rehabilitated. Rather, the Greek attached their word amnesty (same stem as amnesia)—that the law no longer looked upon the act as a wrong or violation. The Hebrews likewise had shorter periods and the sabbatic once every seven years when all wrongs were forgotten.

Gradually, through Roman jurisprudence and into Anglo-American law two concepts took shape—"pardon," lodged in the executive and given on a case-by-case basis by the one charged with law enforcement and representing a continued recognition that a crime had been committed but that the person was "forgiven" so that he did not have to pay the full penalty, and "amnesty," lodged in the legislature by which a new law wiped out the old crimes as to all persons in certain classes, thereby "forgetting" or "obliterating" the crime and fully reconciling the persons to society.

Amnesty is as American as apple pie. It, or a "general" executive pardon which approximates an amnesty, has been given over forty times in the United States for nearly every political offense in our history—for deserters, insurrectionists, rebellion, the Civil War, draft evasion, military court martials, etc. So deeply ingrained in our system is the concept of amnesty that in 1946 we proclaimed amnesty for over two million Japanese and German political offenders. Nor are we alone in this. Nations as diverse as Argentina, Brazil, Canada, Bulgaria, Greece, India, Yugoslavia, the U.S.S.R. likewise gave post World War II amnesties. Wouldn't it be a travesty of American democracy if we could amnesty all these German and Japanese war "criminals" and not amnesty our own sons and daughters, whose only offense in most instances was to see the Vietnam War as constitutionally illegal, morally wrong, and politically unwise far in advance of the general opinion of Congress and the people?

I do not care to here play the numbers game which has become so prevalent on this issue. It would seem enough that we recognize that the number affected is very large. If those receiving less than honorable discharges from the armed services, and if those from former wars unamnestied are included, we are talking about from one to two million persons. Too much attention may have been focused on the men who avoided the draft or left the service and are living abroad. This number is estimated at not over 30,000. On the other hand, those who have less than honorable discharges or who have been arrested in anti-war protests number well over 500,000. Their records currently prevent their employment and often their participation in the governmental process. They are mostly the young, the black, the economically deprived, whose burdens should not be added to. The means they took to protest may well have been the only means available to them. We must not forget the real service they did to America in making us face the reality of Vietnam.

Furthermore, there has been no general amnesty in America since 1933. Thus nearly all political offenses surrounding World War II, the Korean War, the Vietnam War, the Peacetime Draft, and the status of American troops abroad, have gone unamnestied. While this is not a matter directly before your Subcommittee in the pending legislation, I believe it is time we declare oblivion to all these offenses.

A word needs to be said about the Truman "amnesty" of 1947. Today we hear demands for "case-by-case" treatment of offenders or an amnesty conditioned on alternative service for some period of time. These proposals are embodied in some of the bills currently before this Subcommittee. In 1946 Congress authorized and allowed President Truman to set up an "amnesty board" specifically to consider the cases of 15,000 men convicted of draft evasion in World War II. In over a year's time this committee could process and allow less than ten percent of the cases. Truman had to and did allow general pardons to a vastly greater number of convicted deserters and army men in 1952. It is probably proper for a President in granting pardons to make this on a case-by-case basis and even to attach conditions (as is often done by probation). But the scope and purpose of amnesty is different.

Congress grants amnesty by a broad general law; it is intended to forget the crime, not continue to judge it and exact alternative punishment. One does not forget an offense and further reconciliation by continued requirements of alternate service or penalties. Because amnesty has been so long delayed and such a wide variety of offenses are involved, it becomes impossible as a practical matter either to treat the problem on a case-to-case basis or to devise an alternative service for all instances. Nothing less than a full, unconditional and, complete amnesty will suffice.

Henry Steele Commager and Ramsey Clark have pointed out that the argument for amnesty is historical, practical, and ethical. In my law review article to which I have already alluded is the most complete history of amnesty and, as I have stated here, the current situation is a most pressing demand that this history continue, that Congress not forego its rightful powers and defer to the President's views on pardon (or, as he calls it, "amnesty"). Congress has the power of amnesty and Congress should exercise it by enacting legislation which hopefully the President would support by signing.

On the illuminating question of expediency it has many times been pointed out that those who knew the ropes and consulted draft counselors or had the money to hire a lawyer escaped Vietnam service by deferment as students, by enrollment in the Reserve or National Guard, by medical discharge, or various technicalities. These were the service avoiders. But the young man who was poor and black and who knew of none of these "outlets" often found himself trapped in military service with few if any legal courses of action open to express his opposition. There are many practical reasons for amnesty: the numbers involved, the continuing blot on records preventing full participation in the community, the need for the best brain-power and the most socially alive citizens, the impossibility of case-by-case or alternative-service treatment, and the cost to America of carrying so many second-class citizens.

There is also a strong moral imperative for the grant of amnesty. During the Civil War it was the hawks in Congress who demanded the punishment of all southerners and it was a compassionate president who spoke "with malice toward none, with charity for all" and declared, "No one need expect me to take any part in hanging or killing these men, even the worst of them. . . . Enough lives have been sacrificed." There are particularly strong moral reasons for amnesty now. First, we may note that a large portion of those involved were just prematurely right. Some were opposed to the war on moral-ethical grounds but did not sincerely believe they could meet the then court requirement for conscientious objection of belief in a Divine Being (during the war the Supreme Court reversed this law). Another group argued that Congress had been defrauded into adopting the Tonkin Gulf Resolution, that the bombing of Cambodia and the war itself were illegal (Americans generally have come to accept much of this argument). Many within the services found them racist and stacked against the black and poor, and they rebelled (the services belatedly acknowledged and tried to right some of these wrongs). Many prematurely took the position now accepted by Congress and the public—that the war was a mistake and that we should extricate ourselves as completely as possible. For still others the Nuremberg principles declaring the citizen's obligation to refuse to be involved in war crimes and to violate local law if necessary was a real obligation. For any religious persons (and the Supreme Court has declared we are a religious country) the conflict between his obligation to the state and to his God is central to his life.

He cannot be a fascist and give complete obedience to the state. Whether he be Jewish ("You shall have no other gods before Me") or Catholic ("I am, sire, the king's good servant, but I am God's good servant first") or Protestant ("God alone is lord of conscience"), the religious person must place his religious con-

science first. And this is of the most importance ultimately to the state. As I have pointed out in "A Remonstrance for Conscience," 1958 U. of Penna. L. Rev., the whole legal structure of the state is based upon a general moral conscience built by the individual consciences. Ultimately on moral conscience rests law, order, justice, and the abandonment of violence.

It is sometimes argued that we dishonor those who served in the war by granting amnesty. Louise Ransom, President of Americans for Amnesty, who lost a son in Vietnam, has replied adequately (as have also many veterans) : "The only way we can dishonor those who died is to learn nothing from them."

America needs to rediscover its own soul. Not to go on with some post-Vietnam coverup that pretends we have done no wrong and continues to punish those who earliest called us to a moral position. Enough of Watergate-like coverups. Only by a complete, unconditional, and universal amnesty can we regain our legal integrity, our intellectual sanity, our political reality, and our national soul.

STATEMENTS OF SOME QUAKER BODIES ON AMNESTY

Friends Committee on National Legislation, Washington, D.C.

Friends have long realized the wounds of war are sustained by both combatants and non-combatants. A nation suffers because of the moral burden warfare thrusts on the individual and his conscience. The moral and religious dilemmas posed by war and conscription result in an additional casualty list.

The war in Indochina is increasingly recognized by Americans as immoral, illegal, and unjust, carried on in violation of the United Nations Charter and the United States Constitution. Our first priority remains to stop the killing in Indochina.

The Nuremberg principles, supported by the United States, the U.S.S.R., France, and Great Britain, and subsequently approved by the United Nations, emphasize that final responsibility for participation in morally reprehensivle acts against humanity rests with the individual.

We believe most persons who have refused to participate in military service or have opposed conscription during the course of the war in Indochina have done so on the ground that they were conscientiously opposed to the war or wartime military service. However, proof of conscience is inherently difficult, and experience has proved that efforts to judge conscientiousness have been marked all too often by refusals to recognize sincere beliefs. We therefore urge that all persons who have refused military service or conscription should not be punished for such refusal, whether it took place before, during, or after military service.

We urge the President and Congress, in a spirit of reconciliation, to join in a full and unconditional amnesty for all those who are deemed to have violated U.S. laws in this regard. Thus, the government should: (1) permit the return of those now outside the United States, either to stay or to visit; (2) provide for prompt release of all currently held in civilian or military prisons; (3) drop pending and potential prosecutions; and (4) restore civil rights to all who have completed prison terms or otherwise lost such rights due to their opposition to the war.

(Approved by the General Committee, February 21, 1972)

AFSC Policy Statement on Amnesty

The people of the United States have before them the question of amnesty for those who violated civil or military law in the course of active opposition to the war in Indochina, or in the course of removing themselves from participation in or support of that war.

The American Friends Service Committee urges the United States Government to declare an amnesty for all these persons.

The American Friends Service Committee is opposed to all war and all conscription because of our religious faith. We are opposed to participation in war, preparation for war and civilian support of war. We are opposed to civil war, international war, foreign wars, wars in this country, wars of defense, wars of aggression, popular wars and unpopular wars.

Starting from that position, we identify with those for whom we are asking amnesty. We do this even while rejecting methods, such as evasion and violence, used by some. We believe in confrontation with evil, not evasion, and in nonviolent direct action against evil, not violence. These moral judgments we make for ourselves, not for others.

In one sense, those in need of amnesty are accidential victims. In fairness, they should share the good fortune of all those who missed the draft through the lottery, deferments, etc. Others have already received their "amnesty" through the dropping of many cases of military charges and of criminal charges before civilian courts.

Amnesty does not involve making case by case moral, political or pragmatic judgments. Amnesty is not an ex post facto stamp of approval on a class of offenses formerly seen as illegal or anti-social. A declaration of amnesty is a political act which, like many political acts, may be inspired by a great many different motivations and judgments.

Amnesty does not mean forgiveness, nor is forgiveness being sought. Amnesty comes from a Greek word meaning forgetfulness and a French word meaning forgotten. Amnesty means forgetting a broad classification of offenses, being in a state of amnesia insofar as certain events are concerned.

After World War II so-called amnesty was granted to only 1,500 of approximately 15,000 whose conscience had led them to break the Selective Service law. The fact that their objections were religiously based serves to underscore the continued preferential treatment granted religious objectors. We reject this special privilege for limited kinds of objection. Although the AFSC firmly believes these men should have amnesty, we consider it inappropriate to make a special plea for these persons.

There are others with much greater need, with traditions quite different than ours, many of whom have no objection to war in general but came to have profound objections to the Indochina war. Many of these men left this country to avoid Selective Service or to separate themselves from the armed forces. Many of them would like to return. They and their families are torn by separation, financial difficulties, fear and many other problems resulting from having left the country under these circumstances. Others live in this country, some in apprehension underground, some in prison, some with prison terms completed, but carrying permanent legal disabilities as a result.

The misery in the lives of these people should not be used as a political football. Insofar as the amnesty issue is concerned let us put behind us the controversies of the war in Indochina. Amnesty is neither a justification of the legal offenses committed, nor a judgment on the war giving rise to those offenses.

The uncontested fact is that the war in Indochina has torn the fabric of American society as no other war has done since our own Civil War, now more than 100 years behind us. Out of that war came Lincoln's great call for reconciliation, "with malice toward none."

In the spirit of such reconciliation, let us begin to heal the wounds of this war, even while we recognize that we are still a long way from peace in Indochina. As a simple act of mercy which will help thousands of persons to reclaim their rightful role as American citizens there must be an amnesty. As one small step of many needed to get on with the building of peace, let there be an offical forgetting of offenses growing out of opposition to or personal withdrawal from the war in Indochina.

[Approved by AFSC Board of Directors, Apr. 14, 1973.]

PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS INTRODUCTION

In the conflict between the rights of conscience and the regulations of the Selective Service and military systems, we reaffirm our belief in the Peace Testimony which calls for opposition to all wars and conscription. Although the final burden of decision about the extent of resistance to war rests with each individual, we declare that our first allegiance is to the God of love. If this allegiance is challenged by the demands of the state, we must obey God rather than the state. The violators of Selective Service Regulations or the Universal Code of Military Justice, in exile, in hiding, or in prison, deserters from the military, soldiers released with less than honorable discharges, and resistors with prison records include those who, by reason of conscience, refused to participate in the violence inherent in imposing this nation's will upon an alien culture.

In war there are no victors, only victims. Participants and non-participants alike suffer the emotional damage of disunity and discord. After the most divisive war in our history we must understand that our overriding national need is for reconciliation. Amnesty, we believe, is a first step towards reconciliation. Amnesty is "legal oblivion" as distinct from "pardon." It would erase injustices of the past and thus help us face the future without bitterness.

MINUTES

Philadelphia Yearly Meeting of the Religious Society of Friends (Quakers) urges the President and the Congress of the United States—

1. To bring about a general and unconditional amnesty for all who disobeyed laws and orders which, if observed, would have involved them in the war system during the Indochina war.
2. To expunge their criminal records.
3. To restore their civil liberties.
4. To drop all present and future prosecutions and to free those currently under legal restraint.

If this nation is to regain a sense of unity and common purpose, nothing less will do.

[Adopted by Philadelphia Yearly Meeting of the Religious Society of Friends in annual session, Mar. 30, 1973.]

SOUTHEASTERN YEARLY MEETING OF FRIENDS

The Southeastern Yearly Meeting, in conference this Easter weekend, urges the executive, legislative, and judicial branches of our government to hold to the teachings of Jesus in any deliberations on amnesty and the wiping out of sanctions against those citizens who refused to take up arms against the Vietnamese. Both those who openly placed their lives against a law they felt violated their conscience, and who suffered prison terms or alternative service and those who simply determined they would not participate in the killing and maiming and the military effort they disagreed with by whatever means came to hand, are deserving of early action on the aprt of their government under the guidance of those principles taught by the Prince of Peace whose banner so many of us assert to follow.

[Approved by Yearly Meeting, Apr. 1973.]

NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS

The anger and hatred engendered by the war in South East Asia must be healed. Our American Society needs a redirection of emphasis towards social and psychological reconciliation and reconstruction. Our energies are most urgently needed in the conservation of all resources, human and environmental. Our love and reconciling spirit must reach out to all who have been involved in this tragic episode in the life of our Nation including those who chose military service as well as those who could not in good conscience accept such service.

Although we believe most persons who refused to participate in military service or have opposed conscription during the course of the war in Indochina have done so on the ground that they were conscientiously opposed to the war or wartime military service, proof of conscience is inherently difficult. Experience has proved that efforts to judge conscientiousness have been marked all too often by refusals to recognize sincere beliefs. We therefore urge that all persons who have refused military service or conscription should not be punished for such refusal, whether it took place before, during, or after military service.

Illegal acts have been committed both in the prosecution of the war in South East Asia and in resistance to the war. We urge friends to join in the call for a universal and unconditional amnesty for all those who are deemed to have violated U.S. laws relating to military service. We seek "malice toward none and charity toward all."

[Approved by New York Yearly Meeting Aug. 3, 1973.]

NEW ENGLAND YEARLY MEETING OF FRIENDS

New England Yearly Meeting of Friends, standing on the historic Quaker peace testimony, denies all war and violence between persons and nations. As we have supported our members who have conscientiously opposed the U.S. war in Indochina, we now support all those who need amnesty because of violations of law in their acts of protest.

We urge the President and Congress to grant full and unconditional amnesty to all those who face or have suffered criminal penalties for evading or resisting the draft or military service, whether under Selective Service or military law: that is—

1. to permit the return of those outside the U.S.;
2. to provide for prompt release and restoration of full civil rights of all currently held in civilian or military prisons;
3. to drop pending and potential prosecutions; and
4. to restore full civil rights to all who have completed prison terms or otherwise lost such rights due to their opposition to the war.

[Approved by New England Yearly Meeting of Friends at its annual sessions held July–Aug. 4, 1973.]

BALTIMORE YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS

Although the direct participation by United States armed forces in the Indochina conflict appears to be drawing to a close, the wounds of that war will take many years and much effort to heal. Not only Indochina has suffered; many Americans have been killed or wounded, while the moral and religious dilemmas posed by the war and conscription have resulted in still other casualty lists. Americans have been imprisoned for non-cooperation with the selective service act, for nonviolent actions against the war machinery, and for peacefully demonstrating their opposition to the policies of our government. Others have been forced into hiding or exile. Some acquired new insights while in active military service and refused to engage in what they had come to consider crimes against humanity. This often resulted in imprisonment, dishonorable discharge, or desertion.

We realize that complete healing of the wounds of war can come only in a spirit of reconciliation. We remember that the word "amnesty" comes from the same root as "amnesia," meaning the forgetting of past actions, and that it is to be distinguished from the legal term "pardon," which is the forgiving of past actions. We urge the President and the Congress to join in declaring full and unconditional amnesty for all who are deemed by the government to have violated United States laws with respect to the war in Indochina and the draft. Thus, we ask our government to—

1. permit the return of those in exile;
2. provide for the prompt release of all prisoners;
3. drop pending and potential prosecutions;
4. restore civil rights and honorable discharges.

The Baltimore Yearly Meeting of the Society of Friends reaffirms its 300 year old testimony against all war, and maintains that war is the greatest crime that can be perpetrated against mankind. We feel compassion for those who have participated in this war, as well as for those who face punishment for obeying a higher law and refusing to participate. We look toward peace and understanding among all men, and ask others to join with us in this move toward reconciliation.

[Approved by Baltimore Yearly Meeting in annual session, Aug. 5, 1973.]

WESTERN YEARLY MEETING OF FRIENDS CHURCH

War is abhorrent to all mankind. It is contrary to the teachings of Christ and is inconsistent with productive, happy lives of all men. (See Western Yearly Meeting Friends Peace Testimony, 1868.)

Affirming the brotherhood of all mankind in a spirit of reconciliation and Christian love, and without being judgmental, we recognize our responsibility to all of those affected by the war in Indochina. We urge Western Yearly Meeting of Friends and Friends everywhere to support the F. U. M. Indochina Appeal or other similar aid projects which attempt to alleviate the need and suffering of the people of Indochina.

For those with whom we are more closely associated at home we urge a reconstruction of lives which were significantly and adversely disrupted by our Indochina involvement.

To this end we urge that the government—

1. establish policies which will be conducive to a normal re-entry into civilian life for those members of the armed forces who may have been injured mentally, physically, or spiritually and thus are suffering from a lack of the freedoms of life.
2. establish procedures whereby those may return to their normal lives and stature who chose to exercise the alternative of temporarily re-establishing their residence during the period in which armed personnel were engaged in military conflict in Southeast Asia and those who chose to remain in their established residence and were incarcerated as a result of failure to comply with conscription laws.

3. establish prompt procedure for a return to a normal productive life for those persons whose cases have not been brought to trial or against whom charges may not yet have bene brought.

[Approved by Western Yearly Meeting at annual sessions August 1973.]

WILMINGTON (OHIO) YEARLY MEETING

Wilmington Yearly Meeting rejoices in the reduction of the American involvement in Indo-China, and earnestly prays for the total cessation of war in our world. Our thoughts turn to the ministry of reconciliation and love to all of God's people and thus to the issue of amnesty.

We remember that the word "amnesty" comes from the same root as "amnesia," meaning the forgetting of past actions, and that it is to be distinguished from the legal term "pardon" which is the forgiving of past actions. We urge the President and the Congress to join in declaring full and unconditional amnesty for all men and women who are deemed by the government to have violated U.S. laws with respect to the war in Indo-China and the draft. Thus, we ask our government to—

1. permit the return of those in exile,
2. provide for the prompt release of all prisoners,
3. drop pending and potential prosecutions,
4. restore civil rights and honorable discharges.

The religious heritage which we share as members of the Society of Friends and the freedoms which we share as citizens of the United States of America compel us to make this request.

[Approved by the Yearly Meeting August 1973.]

Professor FREEMAN. I will try to summarize my statement and discuss the high points.

Now, because I believe I am one capable of doing it, I would like to discuss the question of the legal power of Congress.

I have here, if the committee desires it, or if counsel for the committe desires it, 20 copies of a law review article, which I published in 1971 in Law and the Social Order and it is entitled "An Historical Justification And Legal Basis For Amnesty Today." This comes out with the conclusion that Congress and only Congress has the power of general amnesty as compared to the power of pardon, which exists in the Presidency. I shall try to discuss some of the cases that are referred to there and I would unite with almost everything that Joseph Rauh has said in this regard.

Mr. KASTENMEIER. We would be most pleased to receive the law review article you referred to both for the record and for our own general needs. Without objection, that will be placed in the record at this point.

[The document referred to follows:]

An Historical Justification And Legal Basis for Amnesty Today

Harrop A. Freeman

Reprinted from:
LAW AND THE SOCIAL ORDER
ARIZONA STATE UNIVERSITY LAW JOURNAL
VOLUME 1971 NUMBER THREE

© 1971 by Arizona State University College of Law
All rights reserved.

An Historical Justification and Legal Basis for Amnesty Today

Harrop A. Freeman*

We live in a time of political activism, and we see men imprisoned for what, at least arguably, are "political crimes." Professor Freeman, convinced that America "cannot afford to 'banish' its potential leaders —those who ardently seek change as well as those who defend the status quo," asserts that amnesty is a proper method for society to forgive those acts that, although denominated criminal, are basically political. In this article he examines the concept of amnesty—its history, its relation to the pardon, when and by whom it may be granted —and concludes that the Congress and the President should take immediate steps to restore to full citizenship all "political prisoners."

Even a casual observer of the American political scene of recent years could hardly fail to wonder whether there has ever been a time in our history when the nation has been so divided, the opposition to a war been so widespread, the cry been so loud on the one hand for "law and order" and on the other that liberty is sacrificed and justice is dead. One wonders, too, if the courts and jails have ever been so full of persons who are, at least colorably, political protestors.[1]

Today there may be more than 140,000 AWOL's and postinduction draft resisters, 100,000 men who failed to register or otherwise avoided the draft, and 35,000 civilians since the beginning of World War II who have been convicted in draft cases.[2] An untold number of soldiers have been disciplined for antiwar sentiments and activities; perhaps 200,000 people of all ages have been arrested and imprisoned or fined for antiwar marches, demon-

*Professor of Law, Cornell University. A.B. 1929, LL.B. 1930, S.J.D. 1945, Cornell University.

1. The meaning of the term "political" is discussed and illustrated later in this article. *See* pages 529–33 *infra*. On the one hand, we cannot merely accept a defendant's statement that his act was political; on the other hand, we cannot accept the view that no felony can be political. (Perhaps we cannot even accept the idea that violence is nonpolitical, for revolution is generally recognized as political.) Tentatively, "political" should be used to refer to any acts, demonstrations, or statements which have the primary purpose of criticizing government policy or laws, bringing about governmental change, or seeking to gain control of government.

2. These figures were compiled by the author from files of the Swarthmore Library Peace Collection, Central Committee for Conscientious Objectors, National Committee for Amnesty Now, and Committees in Canada, Japan, and Scandinavia. These esti-

strations, and mobilizations—a sizeable number being tried or convicted for civil disobedience, burning of draft records, and like offenses; and other groups have been charged with offenses relating to support of groups such as the Black Panthers, or demonstrations at political conventions as in Chicago. All these offenses are, or are variously asserted to be, political offenses. They are all presently unamnestied and unpardoned. These are not in any sense ordinary criminals or those who refuse the duties of society or seek to save their own skins. We are talking about priests like Berrigan and Groppi, academics like Lynn, baby doctors like Spock, and the sons and daughters of the whole country—from middle America to Cabinet members. From a survey taken at Cornell, I would estimate that in the college community today (on which we must depend for future leadership) probably one in every three has in some way been involved in these "political crimes," or has been acquainted with someone who has. For many personally, or for their friends, conviction has actually taken away the right to participate in government.

I. A Thesis

The author would advance this thesis: Any nation, and particularly a democracy, needs all its best minds. It cannot afford to "banish" its potential leaders—those who ardently seek change as well as those who defend the status quo. Amnesty was devised as a method for society to forgive those whose acts were basically political, even though at the time society branded them as criminal, so that there should be constantly built the "nation . . . indivisible" to which we are dedicated by the Pledge of Allegiance.[3]

What are the grounds upon which those who dissent have been disabled by law from their civil rights? Some examples may assist. The Supreme Court has upheld the Selective Service provision that conscientious objectors must be "against war in any form,"[4] although it is well known that Catholics distinguish between just and unjust wars, and Jehovah's Witnesses are against all war except Armageddon. Religion joins philosophy, as well as politics, as an impetus to dissent. Father Berrigan insisted upon burning draft records, arguing that "some property has no right to exist." Spock, Gregory, Dellinger, and nearly every other person claiming his crime, if any, was "political," have asserted first amendment rights.

Speech is precious to free men; but when exercised by a minority it may

---

mates are similar to those currently being used by Senator Robert Taft, N.Y. Times, Jan. 8, 1972, at 29, col. 4–6; by the National Committee for Amnesty Now, statement issued Oct. 15, 1971; and to those reported in Time, Jan. 10, 1972, at 17. *See also* page 519 *infra*. To take just one example, Pentagon figures indicate that in the first 10 months of fiscal year 1971 there were 68,449 desertions from the United States Army, or a rate of 62.6 per 1000 men, up nearly 20 percent from the 52.3 rate for fiscal year 1970. N.Y. Times, Aug. 15, 1971, § 4 (Week in Review) at 4, col. 7.

3. 36 U.S.C. § 172 (1970).

4. Gillette v. United States, 401 U.S. 437 (1971).

occasion political suspicion, which, in turn, may give rise to unsubstantiated criminal charges. It must never be forgotten that charges of the most severe nature are made against persons in high places during periods of great national stress. For example, President Truman was accused of treason by Senator Joseph McCarthy; and John L. Lewis was charged with "virtual treason" for refusing to settle a coal dispute.[5] The Supreme Court upholds even overzealous criticisms of public institutions and figures, and has abolished the rule of seditious libel.[6] Since 1967, over 4000 clergymen and laymen have counseled and aided conscientious draft refusers even though this may violate federal law.[7] These men are lawyers, clergy, doctors—leaders who have acted upon their political beliefs. And we must not forget the warning of the late Justice Hugo L. Black:

> When [America] begins to send its dissenters . . . to jail, the liberties indispensable to its existence must be fast disappearing. . . .
>
> . . . .
>
> . . . There are grim reminders all around this world that the distance between individual liberty and firing squads is not always as far as it seems.[8]

No matter where one stands in the political spectrum, it cannot be gainsaid that the American concept of government stands foremost for political freedom, whose handmaiden is the right of all to the public forum. If dissenters are denied their forum and their leaders, and (by civil disabilities and otherwise) their dignity and civil rights such as that to hold public office, then they are denied their American heritage, and America is denied their counsel. In the United States as elsewhere, the history of amnesty supports the thesis for amnesty. Once a major upheaval has crested, it is endemic in modern history among civilized governments to refuse to bear political grudges against those who, by reason of their political views alone, have sought to turn aside the juggernaut of a majority whom they sincerely believed to be wrong. As a society now experiencing the waning phase of one such an upheaval, Vietnam (even as others wax or wane), it behooves us to examine anew what history can contribute to a resolution of our urgent current problems, if we are to approach these with reasoned intelligence.

II. History of Amnesty—Non-American

Amnesty is a public law concept, derived from the Greek *amnestia* (meaning *oblivion, intentional overlooking*—the same stem as *amnesia*). It is the

5. Russ, *Does the President Still Have Amnestying Power?*, 16 Miss. L.J. 127, 127 (1944). The New York Times publication of The Pentagon Papers has been called virtual if not actual treason. N.Y. Times, June 17, 1971, at 18, col. 6.
6. Monitor Patriot Co. v. Roy, 401 U.S. 265 (1971). *See* Time, Inc. v. Pape, 401 U.S. 279 (1971); Greenbelt Coop. Publ. Ass'n v. Bresler, 398 U.S. 6 (1970); New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
7. 50 U.S.C. App. § 462 (1970).
8. Braden v. United States, 365 U.S. 431, 444–46 (1961) (dissenting opinion).

31-658 O - 74 - 30

act of the legal sovereign voluntarily extinguishing certain "criminal" acts against the state, and almost always involves political offenses. Some view it as a principle of international law that is binding on the sovereign, a kind of *jus gentium*.[9]

Most historians view amnesty's clearest beginning in the act of Thrasybulus (403 B.C.), who, after the expulsion of the Tyrants from Athens, forbade further action against citizens for previous political acts, and required an oath of amnesty to erase all political strife from memory. There are other examples in the Greek period.[10] In Roman law, the practice became common after attempts at political overthrow or intrigue, and was known as *restitutio in integrum*.[11]

France has a long history of amnesties after vitually every civil strife. These were called *lettres de remission generale* or *lettres d'abolition*. Instances[12] include the truce between Armaguacs and Burgundians (1412),[13] amnesties after the Bordeaux civil riots (1548),[14] the Edict of Nantes (1598),[15] nearly thirty examples between the Napoleonic imperial decree of 1802 and the amnesty of 1881 (following the Paris Commune and 1871 civil disturbances),[16] and amnesties of persons convicted of war-related crimes in World War II and the Algerian war.[17]

---

9. At least one court has said that the term "properly belongs to international law . . . . [Amnesty applies] to rebellions which by their magnitude are brought within the rules of international law . . . ." Knote v. United States, 10 Ct. Cl. 397, 407 (1874). The international law book best known at the formation of America, and constantly referred to in the 1860–70 American discussions of amnesty said:

> It is a much-discussed question whether the sovereign must observe the ordinary laws of war in dealing with rebellious subjects who have openly taken up arms against him . . . .
>
> . . . .
>
> . . . Subjects who rise up against their prince without cause deserve the severest punishment. But here, also, the number of the guilty forces the sovereign to show mercy . . . .
>
> . . . If they have revolted without cause . . . the sovereign must even then . . . grant amnesty to the greater number of them.

3 E. DE VATTEL, THE LAW OF NATIONS 336–40 (Fenwick transl. 1916).

10. A. DORJAHN, POLITICAL FORGIVENESS IN OLD ATHENS (1970); J. BURY, A HISTORY OF GREECE (rev. ed. 1951). In Biblical times a kind of amnesty was a part of the festival cycle; old grudges were forgiven every seventh year.
11. *See* 1 ENCYCLOPAEDIA BRITANNICA *Amnesty* 807 (1971); T. MOMMSEN, ROMISCHES STRAFRECHT 457 (1955); G. REIN, KRIMINALRECHT DER ROMER 264 (1962).
12. For greater detail the following works are of value: L. CABAT, DE L'AMNISTIE (1904); P. HUSSON, LA RESERVE DES DROITS DES TIERS DANS LES LOIS D'AMNISTIE (1922); P. PRIGUON, LA NOUVELLE AMNISTIE (1920).
13. *See generally* 2 F. GUIZOT, THE HISTORY OF FRANCE FROM THE EARLIEST TIMES TO 1848, at 207 (R. Black transl. undated).
14. *See generally id.* at 186–87.
15. *See generally id.* at 444–46; A. MAUROIS, A HISTORY OF FRANCE 167 (H. Binsse transl. 1956).
16. *E.g.*, general amnesty of 1859 granted by Napoleon III for all political prisoners. 2 C. GUIGNEBERT, A SHORT HISTORY OF THE FRENCH PEOPLE 614 (F. Richmond transl. 1930).
17. *See, e.g.*, 1 ENCYCLOPEDIA AMERICANA *Algeria* 570 (1971).

With English history we begin to see both the importance of amnesty to Anglo-American law and the source of much of the confusion between pardon and amnesty, hereafter discussed.[18] The most famous early amnesties were those granted in 1651 after the Civil War,[19] in 1660 by Charles II[20] and in 1902 following the Boer War.[21] Amnesties were also granted following World Wars I and II.[22] The theory of pardons, remissions, and amnesties in Britain was that these were all "sovereign" powers, embodied in the King who had powers in many capacities: the King as executive, as judiciary, and the King in Parliament. Because all pardons, remissions, and amnesties were issued in the name of the King, little attention was paid to whether Parliament acted. Actually, in nearly every instance general amnesties were given by the King *in* Parliament.[23]

The practice of amnesty is well developed in many other countries. In the first year following World War II, amnesties were granted to political prisoners in Argentina, Brazil, and Canada, and perhaps elsewhere in the Americas.[24] Similar action could be found in the same year in Bulgaria, Greece, India, Italy, the U.S.S.R., Yugoslavia, and other European countries.[25] In 1946, General MacArthur released nearly one million political prisoners in Japan,[26] and General Clay proclaimed an "amnesty" for over one million German political offenders under the age of 27.[27]

Before turning to the American experience, we should take note of the size of the international problem and of the organization Amnesty International.[28] This London-based group has estimated that there are one-half million individuals in jail principally because of their beliefs: Jehova's Witnesses in Spain intransigently opposed to military service, 1200 Greeks rounded up in the 1967 colonels' coup, several thousand persons in Ethiopia, perhaps 100,000 in Indonesia, and many others.[29] Amnesty International was formed in 1961

18. *See* pages 524–27 *infra*.
19. Gagliardi, *Amnesty*, in Encyclopedia Giuridica Italiana (1884).
20. "An Act of Indemnity and Oblivion." P. Morrah, 1660: The Year of Restoration 170 (1960); 1 Encyclopaedia Britannica *Amnesty* 808 (1971).
21. Treaty of Vereeniging, May, 1902. 1 Encyclopaedia Britannica *Amnesty* 807 (1971).
22. *Id.* at 808.
23. Dr. Groenvelt's Case, 91 Eng. Rep. 1038 (K.B. 1697), which had early said: "[A]s [the King] cannot but have the administration of public revenge, so he cannot but have a power to remit it by his pardons . . . ." *Id.* at 1039. *See also* Gruff, *Some Historical Aspects of the Pardon in England*, 7 Am. J. Leg. Hist. 51 (1963).
24. *See generally* R. Dawson, The Government of Canada (1963); J. Johnson, Continuity and Change in Latin America (1963); Latin America (N. Bailey ed. 1965).
25. *See* 19 Current Dig. Sov. Practice 31 (Nov. 22, 1967); Int'l Communist Jurists Bull. 15–26 (Dec. 1964); 5 Inst. Study U.S.S.R. Bull. 40 (1958); 1 Encyclopaedia Britannica *Amnesty* 808 (1971).
26. *See generally* Government Section, Supreme Commander Allied Powers, Political Reorientation of Japan (1946); K. Kawaii, Japan's American Interlude (1960).
27. *See generally* 1 Encyclopaedia Britannica *Amnesty* 808 (1971).
28. *See* Kahn, *The Meddlers*, New Yorker, Aug. 22, 1970, at 44–57.
29. *Id.* at 44.

to help "prisoners of conscience." It called lawyers, political scientists, editors, labor leaders, philosophers, social workers, and like professionals to Utrecht for a colloquy on "The Boundaries of Freedom." By 1962 it was publishing a monthly, *Amnesty Action*, and a slick-cover journal, *Amnesty International*. It then began its first three missions to Ghana, Czechoslovakia, and Portugal. Many missions and 15,000 members later, Amnesty International has branches in nearly all countries and has helped to free over 2,500 individual prisoners.[30]

III. Amnesty in the United States

United States history is replete with general "pardons" and "amnesties" for political offenses. After the Revolution, Congress restored their rights to those Loyalists who did not flee to Canada.[31] On July 4, 1794, President Washington granted "pardons" to all who participated in the "Whiskey Rebellion."[32] On May 21, 1800, President Adams gave a general pardon to "the late wicked and treasonable insurrection against the just authority of the United States of sundry persons in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania" (the so-called "House tax insurrection" of 1798).[33] In 1815, President Madison gave a general pardon for smuggling and similar offenses to the Barratoria Pirates of New Orleans.[34]

We may skip over the intervening years and come to the Civil War. This period was marked by extensive amnesties, even for treason, and by conflict concerning whether the power to amnesty was congressional or Presidential.[35] Presidents Lincoln and Johnson were both much quicker to forgive insurgents than was Congress. In the Confiscation Law of 1862,[36] Congress had given the President power to "pardon and amnesty" those participating in the rebellion. Lincoln acted twice, Johnson four times. The Presidents accordingly labelled their actions as general pardons *and* amnesties. On December 8, 1863, Lincoln offered to recognize the government of any state in which 10 percent of the voters took the "oath of amnesty" included in the Proclamation. He referred both to his constitutional pardoning power and to Con-

---

30. *Id.*
31. Although reprisals against the Loyalists were severe immediately following the Revolution, many regained their estates by 1789, and confiscatory laws were subsequently repealed. 1 Encyclopaedia Britannica *Loyalists (Tories), America* 378 (1971). Other early examples include John Adams' amnesty to offenders in Fries' Rebellion of 1799, and that granted by James Madison to certain offenders in the War of 1812. 1 Messages and Papers of the Presidents, 1789–1897, at 303–04, 558–60 (J. Richardson comp. 1896) [hereinafter cited as J. Richardson].
32. J. Richardson, *supra* note 31, at 181.
33. *Id.* at 303–04. Some exceptions to the pardon existed. 20 Op. Att'y Gen. 343 (1892).
34. J. Richardson, *supra* note 31, at 558–60.
35. *See* U.S. Const. art. II, § 2.
36. Act of July 17, 1862, ch. 195 § 13, 12 Stat. 589, *as amended*, 12 Stat. 627 (1862).

gress' delegation of the amnesty power, as the sources of his authority.[37] President Johnson, 3 years after the war's end, finally proclaimed

> unconditionally, and without reservation, to all and to every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States . . . .[38]

Congress also was active. As we have said,[39] in 1862 it gave the President the right to "pardon and amnesty" those participating in the rebellion. After the war, Congress amnestied citizens of parts of Louisiana, and Representatives therefrom were received in the House.[40] Progressively broader amnesties were subsequently proposed in Congress;[41] the most inclusive (all participants) was defeated in 1873.[42] However, in 1872, Congress did enact a general amnesty bill which excepted only certain high officials,[43] at least on the theory that it had not delegated the total amnesty power to the President.[44] The first truly universal amnesty, which included the few remaining Civil War pariahs, was passed by Congress in 1898, after the Spanish-American War.[45]

The Supreme Court did little[46] to resolve the question of power. In Ex parte *Garland*,[47] while nullifying test oaths for pardoned lawyers, the Court stated that the President could give a general pardon prior to conviction as

---

37. Proclamation No. 11, 13 Stat. 737 (Dec. 8, 1863). *Cf.* J. FICKLEN, HISTORY OF RECONSTRUCTION IN LOUISIANA 151 (1910).

38. Proclamation No. 15, 15 Stat. 711, 712 (Dec. 25, 1868).

39. *See* note 36 *supra*.

40. J. FICKLEN, *supra* note 37, at 180.

41. *See* J. DORRIS, PARDON AND AMNESTY UNDER LINCOLN AND JOHNSON (1953).

42. *Id.* at 380.

43. *Id.* at 375–79. During this period there were, however, amnesty bills enacted for the benefit of individuals, Act of June 19, 1868, ch. 62, 15 Stat. 360 (R. R. Butler of Tennessee); and persons in designated sections, Act of June 19, 1868, ch. 83, 15 Stat. 361 (about 1350 people).

44. *See* J. DORRIS, *supra* note 41, at 358–61. The Wade-Davis bill, containing the radical republican plan for reconstruction and including clemency provisions, was passed by Congress but vetoed by President Lincoln, Proclamation No. 18, 13 Stat. 744–45 (July 8, 1864). *See* Russ, *supra* note 5, at 127, 129–30 (interesting account of battle over amnesty between President and Congress).

45. Act of June 6, 1898, ch. 389, 30 Stat. 432. President Johnson declared a universal amnesty for all those yet unpardoned on Christmas Day, 1868. *See* note 38 *supra*. J. DORRIS, *supra* note 41, at 310–11. But congressional action did not include the highest officials, such as Jefferson Davis, until 1898. *Id.* at 387–391. One author indicates that Congress was concerned with relief from political disabilities, while the Presidential action effected "pardon" from *crime*. P. BUCK, THE ROAD TO REUNION 1865–1900, at 121–27 (1937). *See generally* K. STAMPP, THE ERA OF RECONSTRUCTION 1865–1877 (1965). The following Presidential proclamations are also of interest: Proclamation No. 11, 13 Stat. 737 (Dec. 8, 1863); Proclamation No. 14, 13 Stat. 741 (Mar. 26, 1864); Proclamation No. 37, 13 Stat. 737 (May 29, 1865); Proclamation No. 6, 15 Stat. 702 (July 4, 1868); and Proclomation No. 15, 15 Stat. 711 (Dec. 25, 1868).

46. *See* pages 524–25 *infra*.

47. 71 U.S. (4 Wall.) 333 (1867).

well as after conviction, and blot out guilt as well as relieve from punishment.[48] But in fact the Presidential proclamation was under the amnesty power delegated by Congress in 1862,[49] as well as under this pardoning power. The issue could not be squarely faced while the 1862 delegation was in effect; Congress repealed it on January 7, 1867.[50] The earlier cases avoided the issues, and those after 1867 perhaps viewed the thirteenth, fourteenth, and fifteenth amendments, and the almost universal congressional amnesty of 1872, as retroactively eliminating the issue for the Civil War period.[51]

After the Civil War both the practice and the confusion between pardon and amnesty continued. By an Act of March 22, 1882, Congress provided:

> That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation before the passage of this act, on such conditions and under such limitations as he shall think proper . . . .[52]

---

48. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.

    Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

    Id. at 380–81.

49. *See* note 37 *supra.*

50. Act of Jan. 21, 1867, ch. 8, 14 Stat. 377.

51. The cases and opinions of this period fall into these categories: (A) Lower court cases holding that early Presidential pardons applied not only to those in custody for treason but also to enemies in the field. *E.g.*, United States v. Hughes, 26 F. Cas. 420 (No. 15,418) (D.C.S.D. Ohio 1864). The issue never reached the Supreme Court and the rule was changed by Proclamtion No. 14, 13 Stat. 741 (Mar. 26, 1864). (B) Decisions holding that pardon or amnesty did not apply to things, such as vessels. *E.g.*, The Gray Jacket, 72 U.S. (5 Wall.) 342, 367–68 (1866); 10 Op. Att'y Gen. 452 (1963); 11 Op. Att'y Gen. 445 (1866). (C) Decisions granting to loyal persons the right to recover property seized, or the cash proceeds thereof. United States v. Klein, 80 U.S. (13 Wall.) 128 (1871); United States v. Padelford, 76 U.S. (9 Wall.) 531 (1869); Hamilton v. United States, 7 Ct. Cl. 444 (1871). (D) Cases in which recovery of confiscated property was denied because of lapses in coverage or express exceptions in pardons, amnesties, or statutes. Semmes v. United States, 91 U.S. 21 (1875); The Confiscation Cases, 87 U.S. (20 Wall.) 92 (1873). (E) Claims concerning forfeited realty and dealing with the vesting or nonvesting of property rights in other parties. *E.g.*, Jenkins v. Collard, 145 U.S. 546 (1893); Illinois Cent. R.R. v. Bosworth, 133 U.S. 92 (1890) (good review of cases); Wallach v. Van Riswick, 92 U.S. 202 (1875). (F) Cases holding that proof of loyalty is not prerequisite to recovery by amnestied persons in the Court of Claims. Pargoud v. United States, 80 U.S. (13 Wall.) 156 (1871); Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871). Many of these cases discuss the question whether amnesty power lies in the President or in Congress. Although often in dicta only, the cases suggest that the Court was not sheltered from the issue—language concerning the Presidential power often seems almost gratuitously bold in his favor. *See* pages 527–30 *infra.*

52. Act of Mar. 22, 1882, ch. 47, § 6, 22 Stat. 30.

Such amnesties were thereafter proclaimed by the President.[53] The universal amnesty following the Spanish-American War was congressional.[54] President Wilson in effect pardoned a list of espionage agents after World War I.[55] President Coolidge remitted citizenship and civil rights to men who deserted the armed forces between the end of actual World War I combat and the formal termination of the war.[56] In 1933, Franklin D. Roosevelt granted a Christmas "full pardon" to all violators of the World War I draft laws and the 1917 espionage law.[57]

Following the Draft Act of 1940,[58] we come to some of our most confusing history. Before Christmas 1945, President Truman granted a full pardon for all nonmilitary federal crimes to every honorably discharged World War II veteran.[59] He stated at that time that he was considering a general "amnesty," and almost immediately a Committee for Amnesty was formed, comprised of such well known persons as A. J. Muste, Dorothy Canfield Fisher, Henry Luce, Pearl Buck, Thomas Mann, Thornton Wilder, Harry Emerson Fosdick, Thurgood Marshall, and Frank Graham. In late 1946, President Truman appointed a "President's Amnesty Board,"[60] headed by Supreme Court Justice Roberts. A Gallup poll of January 28, 1947, showed 69 percent favoring amnesty and 23 percent opposed.[61] Over 100 organizations representing most church, union, civil rights, and humanitarian groups, urged amnesty. The major newspapers editorialized for amnesty.[62] Peculiarly, the President's Amnesty Board in effect resolved itself into a parole board. It considered the Selective Service violators on a case by case basis, ultimately recommending pardons in 1523 cases of obvious injustice (out of 15 to 20 thousand persons actually convicted). These individuals were then pardoned

---

53. Congress authorized the President to give "amnesty," *id.*; President Arthur exercised this power case by case, and the courts viewed his action as "pardon," which carried with it the full congressional "amnesty." *See* United States v. Bassett, 5 Utah 131, 131–34, 13 P. 237, 238–39 (1887), *rev'd on other grounds*, 137 U.S. 496 (1890). Presidents Harrison and Cleveland later acted to proclaim "amnesty" for the Mormons. Proclamation No. 42, 27 Stat. 1058 (Jan. 4, 1893); Proclamation No. 14, 28 Stat. 1257 (Sept. 25, 1894).

54. *See* page 521 *supra*.

55. Wilson commuted the sentences of some 50 people, including Eugene V. Debs, who had been convicted under the 1917 Espionage Act. For most the result was a reduction in sentence, only one individual gaining a full reprieve of punishment. N.Y. Times, May 9, 1919, at 6, col. 4; *id.*, Dec. 31, 1921, at 4, col. 1. An interesting collection of materials on amnesty in World War I may be found in the New York City Public Library.

56. Proclamation, 43 Stat. 1940 (Mar. 5, 1924).

57. Proclamation, 48 Stat. 1725 (Dec. 23, 1933).

58. Act of Sept. 16, 1940, ch. 720, 54 Stat. 885.

59. Proclamation No. 2676, 3 C.F.R. 72 (Dec. 24, 1945).

60. Exec. Order No. 9814, 3 C.F.R. 594 (Dec. 23, 1946).

61. Poll on file with Committee for Amnesty, 5 Beekman Place, New York, N.Y.

62. Washington Post, Dec. 25, 1947; N.Y. Herald Tribune, Dec. 25, 1947.

by the President in December 1947.[63] After that the Board ceased to function.[64] During the Korean War, in an action similar to President Coolidge's,[65] President Truman proclaimed pardons for all federal crimes to honorably discharged veterans who had 1 year of service after June 1950.[66] He also remitted citizenship and civil rights to all persons convicted of military desertion from August 14, 1945, to June 25, 1950.[67] There was again an organized move for amnesty in 1953, but nothing came of this.[68] No further amnesties nor general pardons have occurred since. So, literally, all the "political" prisoners not covered by the Roosevelt Proclamation of 1933;[69] all Selective Service violators of World War II, the Korean and Vietnam Wars, and the intervening periods; all persons convicted since 1933 of "political" crimes; and all persons who are subject to prosecution for any of these various types of crimes (unless covered by one of the pardons for honorably discharged veterans) are today unamnestied and effectively deprived of their rights as citizens. Moreover, the country is deprived of their potential leadership.

IV. Amnesty and Pardon Distinguished

As can be seen from the above review there has been considerable confusion between pardon and amnesty, particularly by laymen and by Presidents in their attempts to assert power. But it does not appear to this writer that there is or should be any legal confusion.

In *Burdick v. United States*,[70] the Supreme Court defined the concept of amnesty, in comparison to pardon, as follows:

> The one [amnesty] overlooks offense; the other [pardon] remits punishment. The first is usually addressed to crimes against the sovereignty of the State, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the State. Amnesty is usually general, addressed to classes or even communities, a legislative act or under legislation, constitutional or statutory, the act of the supreme magistrate.[71]

---

63. Proclamation No. 2762, 3 C.F.R. 145 (Dec. 23, 1947).
64. In the Proclamation establishing the Board, *supra* note 57, it was provided that the Board would cease to function after it presented its recommendations to the Attorney General. It did so on December 23, 1947. Some action in quest of amnesty continued. *See, e.g.*, N.Y. Times, Dec. 26, 1947, at 18, col. 3; *id.*, Feb. 9, 1948, at 20, col. 3.
65. *See* page 523 and note 56 *supra*.
66. Proclamation No. 3000, 3 C.F.R. 175 (Dec. 24, 1952).
67. Proclamation No. 3001, 3 C.F.R. 175 (Dec. 24, 1952).
68. To the author's knowledge, the following amnesty campaigns occurred: Committee for Amnesty, 1945–47; Central Committee for Conscientious Objectors, 1949; Central Committee for Conscientious Objectors and American Friends Service Committee, 1953–54; War Resisters League and others, 1945, 1951, 1956; Amnesty International, 1961.
69. *See* page 523 *supra*.
70. 236 U.S. 79 (1915).
71. *Id.* at 95.

In *United States v. Bassett*,[72] a case involving congressional authorization for the President to grant amnesty for the practice of bigamy, the Court said:

> The word "Amnesty" is defined thus: "An act of oblivion of past offenses, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period."
>
> A pardon relieves an offender from the consequences of an offense of which he has been convicted, while amnesty obliterates an offense before conviction; and in such case, he stands before the law precisely as though he had committed no offense. And while the term "pardon" was used by the president, it had the effect of amnesty.[73]

The *Encyclopedia of the Social Sciences* distinguishes the juridical aspects and reports the President-Congress confusion:

> Amnesty is usually held to be juridically different from pardon in that it involves no nullification of a penalty already judicially determined in particular cases, but is a general determination that whole classes of offenses and offenders will not be prosecuted. Normally amnesty is carried into effect by statute rather than by executive order, unless a devolution of the power upon the executive has been granted, under a survival of executive prerogative such as exists in England and Italy and, perhaps one may say, in the United States. Joseph-Barthelemy almost alone believes that amnesty, because it involves discretion, is an executive act and for that reason, under the French system, ought to be accorded by the parliament (not as a legislative power but as representative of the nation) but on the exclusive initiation of the government. Others have held that it proceeds ultimately from the highest source of legislative authority, existing in the crown under constitutional monarchies, in the representative body under parliamentary republics. Owing to a refusal on the part of American courts to differentiate amnesty from pardon, the power is found both in president and in Congress under the constitutional allocation of powers in the United States.
>
> For purposes of formal classification amnesties may be said to be: first, general or particular, that is, they may cover all classes of political offenders or may be limited to special groups, with specific exceptions; and second, absolute or conditional, that is, they may impose no conditions or they may demand the performance of certain conditions before their provisions enter into legal effect.[74]

State v. Blalock[75] is often taken as the classic statement in the state courts:

> Pardon and amnesty are not precisely the same. A pardon is granted to one who is certainly guilty, sometimes before, but usually after conviction. And the court takes no notice of it, unless pleaded, or claimed by the person pardoned; and it is usually granted by the crown or by the executive. But amnesty is to those who may be guilty, and is usually granted by Parliament, or the Legislature;

---

72. 5 Utah 131, 13 P. 237 (1887), *rev'd on other grounds*, 137 U.S. 496 (1890).
73. *Id.* at 133, 13 P. at 239 (citations omitted).
74. W. Elliott, *Amnesty* in 2 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 36–37 (E. Seligman & A. Johnson eds. 1930) (citations omitted).
75. 61 N.C. 199 (1867).

and to whole classes, before trial. Amnesty is the abolition or oblivion of the offense; pardon is its forgiveness.[76]

Federal cases generally recognize the following principle features of amnesty: (a) oblivion, (b) for past offenses, (c) usually in favor of classes of persons, (d) who may not already have been convicted, (e) for generally political act(s) against the sovereign, (f) as a matter of legislative grace.[77] The federal and state pardon cases are also helpful in clarifying the definitional problem. Pardon is considered a "remission of the punishment,"[78] which erases any imposition of punishment but does not negate the offense itself,[79] although a few cases say it is a remission of "guilt."[80] Since pardon exempts a person from the punishment, it properly proceeds from the one required to enforce penalties—the executive.[81] Pardon is individual, and it must be accepted by the beneficiary as he would a deed or grant.[82] Acceptance of a pardon admits guilt, in exchange for the remission of penalties.[83] Sometimes the courts try to distinguish between a pardon and a "full pardon." The latter

---

76. *Id.* at 202–03. *See also* State *ex rel.* Anheuser-Busch Brewing Ass'n v. Eby, 170 Mo. 497, 524, 71 S.W. 52, 61 (1902); *In re* Briggs, 135 N.C. 118, 145–46, 47 S.E. 403, 411 (1904) (concurring opinion).

77. *E.g.*, Brown v. Walker, 161 U.S. 591, 601–02 (1896). Useful comparisons are United States v. Hughes, 175 F. 238, 242 (D.C.W.D. Penn. 1892), *aff'd for want of prosecution*, 154 U.S. 505 (1893) (number of persons affected differentiates pardon and amnesty); United States v. Wilson, 32 U.S. (7 Pet.) 150 (1833) (pardon).

78. State v. Brinkley, 354 Mo. 1051, 1073–74, 193 S.W.2d 49, 58 (1946); Moore v. State, 43 N.J.L. 203, 241 (1881).

79. United States v. Swift, 186 F. 1002, 1017 (1911); *In re* Spenser, 22 F. Cas. 921, 922 (No. 13,234) (C.C.D. Ore. 1878); Hughes v. State Bd. of Health, 348 Mo. 1236, 1241, 159 S.W.2d 277, 279 (1942); People *ex rel.* Prisament v. Brophy, 287 N.Y. 132, 138–40, 38 N.E.2d 468, 471–72 (1941). Some say a pardon cannot be granted until after sentencing. *E.g.*, State *ex rel.* Gordon v. Zangerle, 136 Ohio St. 371, 375, 26 N.E.2d 190, 194 (1940). *But see* note 47 *supra*, and note 84, *infra*.

80. *E.g.*, *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866); United States *ex rel.* Palermo v. Smith, 17 F.2d 534, 535 (2d Cir. 1927); United States *ex rel.* Forino v. Garfinkel, 69 F. Supp. 846, 848 (W.D. Pa. 1947), *rev'd on other grounds*, 166 F.2d 887 (3d Cir. 1948); State *ex rel.* Collins v. Lewis, 111 La. 693, 695, 35 So. 816, 817 (1904). *See* note 47 *supra*, and note 81 *infra*.

81. United States v. Wilson, 32 U.S. (7 Pet.) 150, 160–61 (1833); George v. Lillard, 106 Ky. 820, 823, 51 S.W. 793, 794 (1899); Rich v. Chamberlain, 104 Mich. 436, 440–41, 62 N.W. 584, 585 (1895); State v. Stern, 210 Minn. 107, 110, 297 N.W. 321, 323 (1941); State *ex rel.* Stewart v. Blair, 356 Mo. 790, 794–95, 203 S.W.2d 716, 718 (1947); State v. Jacobson, 348 Mo. 258, 260–61, 152 S.W.2d 1061, 1063 (1941); *Ex parte* Campion, 79 Neb. 364, 370–73, 112 N.W. 585, 588 (1907); People *ex rel.* Prisament v. Brophy, 287 N.Y. 132, 135–37, 38 N.E.2d 468, 470–71 (1941); Roberts v. State, 30 App. Div. 106, 51 N.Y.S. 691, 692 (1898), *aff'd*, 160 N.Y. 217, 54 N.E. 678 (1899); People *ex rel.* Benton v. Court of Sess., 8 N.Y. Crim. 355, 359–61, 19 N.Y.S. 508, 510 (Sup. Ct. Monroe County, 1892); State v. Peters, 43 Ohio St. 629, 650, 4 N.E. 81, 87 (1885); *Ex parte* Ridley, 3 Okla. Crim. 350, 354–56, 106 P. 549, 551 (1910); *Ex parte* Miers, 124 Tex. Crim. 592, 594–96, 64 S.W.2d 778, 780 (1933); *Ex parte* Rice, 72 Tex. Crim. 587, 593–95, 162 S.W. 891, 899 (1913).

82. Burdick v. United States, 236 U.S. 79, 91 (1915); United States v. Wilson, 32 U.S. (7 Pet.) 150, 160–61 (1883).

83. State v. Jacobson, 348 Mo. 258, 261, 152 S.W.2d 1061, 1963 (1941); Jones v. State, 141 Tex. Crim. 70, 73–74, 147 S.W.2d 508, 510 (Ct. Crim. App. 1941); State v. Cullen, 14 Wash. 2d 105, 109, 127 P.2d 257, 259 (1942).

is said to equal an amnesty and blot out the offense as well as the punishment,[84] but such statements are often dicta. Confusingly, in cases of this type, and on occasion, in others, the courts may say that pardon both wipes out the conviction *and* restores civil rights.[85]

V. Authority To Grant Amnesty and Pardons in the United States

It can be fairly readily ascertained that the power to *pardon* is only in the President. The United States Constitution provides: "The President . . . shall have Power to grant Reprives and Pardons for Offenses against the United States, except in Cases of Impeachment."[86] Early English history, from which we derive our theories of government, and the general history of pardon,[87] confirm that pardon is an executive function. The Supreme Court has recognized that "[t]his [pardoning] power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders."[88] This is so even though there were, in effect, legislative pardons prior to our Constitution,[89] and some states have continued to use them.[90]

One constitutional question still remains open. As shown in the section above,[91] the generally accepted theory of pardon is that it assumes that guilt has been proved and punishment imposed; pardon may be granted only *after* a conviction. It can be argued on behalf of the President, on the other hand, that the Constitution uses the word "offenses," not "crimes," and "offenses" can refer as well to preconviction cases. There is some support for such a distinction between offenses and crimes in the cases defining these terms,[92] but it is weak and many cases fail to mention any such dis-

---

84. *See, e.g.*, United States v. Athens Armory, 24 F. Cas. 878, 884 (No. 14,473) (N.D. Ga. 1866); Randall v. State, 73 Ga. App. 354, 376, 36 S.E.2d 450, 463 (1945), *cert. denied*, 329 U.S. 749 (1946); *Ex parte* Jones, 25 Okla. Crim. 347, 350, 220 P. 978, 979 (923); Warren v. State, 127 Tex. Crim. 71, 74, 74 S.W.2d 1006, 1008 (1934).

85. Knote v. United States, 95 U.S. 149, 153 (1877); Taran v. United States, 266 F.2d 561, 566 (8th Cir. 1959); Groseclose v. Plummer, 106 F.2d 311, 313 (9th Cir. 1939); Verneco, Inc. v. Fidelity & Cas. Co., 253 La. 721, 724, 219 So.2d 508, 511 (1969); State *ex rel.* Herman v. Powell, 139 Mont. 583, 588–89, 367 P.2d 553, 556 (1961); Commonwealth *ex rel.* Banks v. Cain, 345 Pa. 581, 584–86, 28 A.2d 897, 899–900 (1942).

86. U.S. Const. art. II, § 2.

87. *See* history, page 519 and pages 520–24 *supra*.

88. *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866).

89. *E.g.*, prerevolution writs of amnesty issued by the Maryland legislature. J. McSherry, History of Maryland 62–63 (1904) (pardon agreement between Puritans and Catholics, Mar. 22, 1658).

90. *See, e.g.*, State v. Nichols, 26 Ark. 74 (1870); State *ex rel.* Witter v. Forkner, 94 Iowa 1, 62 N.W. 772 (1895); State v. Bowman, 145 N.C. 452, 59 S.E. 74 (1907).

91. *See* pages 524–26 *supra*.

92. *See Ex parte* Grossman, 267 U.S. 87, 120 (1925); *In re* Opinion of Justices, 301 Mass. 615, 17 N.E.2d 906 (1938); State v. Brantley, 1 Ohio St. 2d 139, 205 N.E.2d 391 (1965). *See also*, United States v. Witherspoon, 110 F. Supp. 364 (E.D. Tenn.

tinction.[93] The Supreme Court has expressly refused to consider this pre- versus postconviction question concerning the Presidential pardoning power,[94] and the issue remains to be resolved.

We have pointed out some attempts in the cases to define a "full and complete" or "general" pardon as nearly the equivalent of amnesty,[95] but this writer can find neither authoritative nor modern Supreme Court acceptance of such a view.

It is submitted that the power of *amnesty* belongs only to the United States Congress.[96] The *Encyclopedia of the Social Sciences* shows this to be a view accepted by scholars.[97] The only law review article to date which faces the question, takes as its thesis that Congress alone has the amnestying power.[98]

The original Constitution did not expressly place the amnesty power. It is the general rule that in such situations it rests where it would under the then British system,[99] or in the people under the ninth and tenth amendments to the Constitution.[100] If anyone can exercise it on their behalf, it is their representatives in Congress. The one place in the Constitution where the matter is *now* mentioned is in the fourteenth amendment (adopted after the President-Congress conflict of the Civil War), which clearly recognizes that the power to amnesty lies with the Congress.[101] The early Presidential actions were

---

1953), *modified*, 211 F.2d 858 (6th Cir. 1954); W.J. Dillner Transfer Co. v. International Bhd. of Teamsters, 94 F. Supp. 491 (W.D. Pa. 1950); People v. Phillips, 284 N.Y. 235, 30 N.E.2d 488 (1940).

93. *E.g.*, Pendergast v. United States, 317 U.S. 412 (1943); United States v. Bozza, 365 F.2d 206 (2d Cir. 1966); State v. Slowe, 230 Wis. 406, 284 N.W. 4 (1939).

94. Burdick v. United States, 236 U.S. 79, 93 (1915).

95. *See* note 84 *supra*.

96. *See* the historical section, pages 517–24 *supra*, for a discussion of the many examples of legislative amnesty.

97. *See* page 525 *supra*.

98. Russ, *supra* note 5, at 127.

99. *See Ex parte* Wells, 59 U.S. (18 How.) 307, 310–11 (1955). Traditionally, amnesty was considered the King's prerogative, although restrictions were placed on his arbitrary use of it. *Id.* at 310–12.

100. The text reads:

> The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. CONST. amend. IX. Furthermore:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Id. amend. X. The Supreme Court has said:

> Although the power to grant reprieves and pardons may be vested in the President, this has never been held to take from the legislature the power to pass acts of general amnesty.

Brown v. Walker, 161 U.S. 591, 601 (1896).

101. The text reads:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a

either pardons in fact, or were taken under express congressional delegation of the amnestying power.[102]

Subsequent to the Civil War, as the historical review shows, Congress and the President have generally respected this division of power.[103] Thus Congress authorized an amnesty to the Mormons for bigamy,[104] which was later proclaimed by the Executive.[105] When Presidents Wilson, Coolidge, and Roosevelt forgave offenses, they were properly acting under their pardoning power and used the word "pardon."[106] President Truman created an "Amnesty Board" in 1946 but in fact it recommended pardons to him and he granted pardons. The same is true of all Presidential actions regarding World War II and the Korean War.[107]

It therefore seems clear that the President is empowered to grant *pardons* for all past offenses for which an *individual* has been convicted, and perhaps for those for which he has not been convicted and on which the statute of limitations on prosecution has not run, while Congress has the farther reaching prerogative to grant *amnesties* for *all* political activity.

Many of our political offenders have been prosecuted or threatened with prosecution under state laws of trespass, unlawful assembly, and the like. Can the United States (President and Congress) pardon or amnesty these state offenders? It is submitted that to the extent that a state conviction punishes one for acts against the federal government (*e.g.*, destruction of draft files), the President and Congress do have such power.[108] They also may have it where the state conviction prevents exercise of federal rights, such as voting.[109] It is even arguable that the only "sovereignty" in the United States is that of the United States, and the States are merely allowed to exercise certain aspects thereof, so that Congress and the President may exercise complete powers of amnesty and pardon over the effects of *all* state

---

> member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
>
> U.S. CONST. amend. XIV, § 3.

102. *See* pages 520–24 *supra*.

103. When a president questioned Congress' action he did so because Congress limited his "prerogative of pardon." President Johnson's Farewell Address, Mar. 4, 1869, in THE AMERICAN ANNUAL CYCLOPEDIA 591 (1869).

104. Act of Mar. 22, 1882, ch. 47, § 6, 22 Stat. 30.

105. Proclamation No. 42, 27 Stat. 1058 (Jan. 4, 1893); Proclamation No. 14, 28 Stat. 1257 (Sept. 25, 1894).

106. *See* page 523 *supra*.

107. *See* pages 523–24 *supra*.

108. *See* Hamm v. City of Rock Hill, 379 U.S. 306, 314–17 (1964) (in passing the Civil Rights Act, Congress validly exercised power to abate prior state prosecutions in lunch-counter cases).

109. *Id.*

offenses, since it is federal law which removes federal rights upon a state conviction.[110]

VI. Offenses for Which Amnesty Can Be Granted

One way to approach this question is to say that it is "political" offenses for which amnesty can be granted and then inquire what "political" means. But this approach presents us with a dilemma because crimes are the unique province of the courts, yet the courts refuse to consider political issues.[111] Hence using the term "political crimes" is like trying to mix oil and water. But the dilemma may be more apparent than real, for it may be the courts' refusal to consider the political nature of an offense that requires the offender to seek amnesty from the legislative or executive branch.[112]

Or we may turn to general definitions of "political." Here, the wide range of uses of the word—political issue, office, matter, party, organization, and the like—makes the definitions of little help. One does gather that anything is "political" which pertains to the policy of government or to any group of persons holding similar beliefs who strive to gain control of government or general adoption of their own programs. At the same time there is an attempt to restrict the term to orderly processes and rule out revolution.[113] A recent case[114] holds that citizen protest marches are "political" under the Hatch Act[115] and Civil Service regulations.[116]

---

110. *See In re* Bocchiaro, 49 F. Supp. 37 (W.D.N.Y. 1943); 10 Op. Att'y Gen. 452 (1863); 11 Op. Att'y Gen. 122 (1864).

111. The rule has not been substantially altered by the Wechsler-Bickel debate. *Compare* Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1 (1959), *with* Bickel, *Foreword: The Passive Virtues*, 75 Harv. L. Rev. 40 (1961). Nor has it been dislodged by the liberalizing cases of Brown v. Board of Educ., 347 U.S. 483 (1954); Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964); Powell v. McCormack, 395 U.S. 486 (1969); and their progeny. Many law review articles so indicate. *E.g.*, Scharpf, *Judicial Review and the Political Question: A Functional Analysis*, 75 Yale L.J. 517 (1966).

112. Also of interest is the refusal of the Supreme Court to adjudicate the legality of the war in Vietnam, involved in many of the offenses we are considering. Massachusetts v. Laird, 400 U.S. 886 (1970); Velvel v. Nixon, 396 U.S. 1042 (1970); McArthur v. Clifford, 393 U.S. 1002 (1968); Hart v. United States, 391 U.S. 956 (1968); Holmes v. United States, 391 U.S. 936 (1968); Mora v. McNamara, 389 U.S. 934 (1967); Miller v. United States, 389 U.S. 930 (1967). *Compare* Velvel, *The War in Vietnam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, 16 Kan. L. Rev. 449 (1968), *with* Note, *Congress, the President, and the Power to Commit Forces to Combat*, 81 Harv. L. Rev. 1771 (1968). *See also* Autenrieth v. Cullen, 418 F.2d 586 (9th Cir. 1969), *cert. denied*, 397 U.S. 1036 (1970) (refusal to allow religious scruples as a defense to payment of war taxes); F. Wormuth, The President Versus the Constitution (1968).

113. General definitions: Moser v. United States, 341 U.S. 41 (1951); People v. Morgan, 90 Ill. 558 (1878); *In re* Stillwell Political Club, 17 N.Y.2d 574, 215 N.E.2d 512, 109 N.Y.S.2d 331 (Sup. Ct. 1951). Excluding revolution: Pockman v. Leonard, 39 Cal. 2d 676, 249 P.2d 267 (1952), *appeal dismissed*, 345 U.S. 962 (1953); Lockheed Aircraft Corp. v. Superior Court, 28 Cal. 2d 481, 171 P.2d 21 (1946).

114. Holden v. Finch, 446 F.2d 1311 (D.C. Cir. 1971).

115. 18 U.S.C. §§ 594–95, 598, 600–01, 604–05, 608–09, 611–12 (1970).

116. *E.g.*, 5 C.F.R. § 315 (1971), 18 U.S.C. § 595 (1970).

But these definitions become wholly inadequate when we look at the deportation and extradition statutes and cases, the only place the federal law seems to define "political crimes" explicitly. The Refugee Relief Act of 1953[117] and the Displaced Persons Act of 1948[118] permit stay of deportation and acquisition of immigrant status if return to the country of former residence would cause political persecution or fear of persecution. This turns out to be persecution on account of race, religion, or political beliefs or activity.[119] The extradition statutes, treaties, and cases are even more helpful. "Political offenses" are not cause for extradition, whether there has been a conviction or a mere charge, and this is so because the United States should not permit its legal process to be used by a foreign government for reprisals against its political opponents.[120] To defeat extradition for murder or other violent crimes, it is necessary for the accused to prove that he was part of a revolutionary movement, or that the occurrence was part of a political uprising or opposition.[121] Giving orders to kill during a war (and presumably refusing orders to kill or participate in war acts) is a political crime,[122] as is treason.[123] There is some indication that such acts as going to another country or claiming foreign citizenship to avoid required military service are political.[124]

But it is the historical examples of the use of amnesty that seem determinative. Amnesty has been used to erase treason, insurrection, attempted political overthrow, tax refusal, civil and racial strife, draft avoidance, army desertion, disloyalty, espionage, and even bigamy, polygamy, and murder,[125] particularly when these arise from political-racial-religious claims of necessity.[126]

---

117. 67 Stat. 400 (1953).
118. 62 Stat. 1009 (1948), *as amended*, 64 Stat. 219 (1950).
119. *See* 50 U.S.C. App. § 1971(d); 8 U.S.C. §§ 1101, 1253(h) (1970). Cheng Fu Sheng v. Barber, 269 F.2d 497 (9th Cir. 1959); Cheng Lee King v. Carnahan, 253 F.2d 893 (9th Cir. 1958); Application of Paktorovics, 156 F. Supp. 813 (S.D.N.Y. 1957), *rev'd*, 260 F.2d 610 (2d Cir. 1958); *Ex parte* Kurth, 28 F. Supp. 258 (S.D. Cal.), *appeal dismissed*, 106 F.2d 1003 (9th Cir. 1939). Court review of executive action is very narrow: Schieber v. United States Immig. & Nat. Serv., 427 F.2d 1019 (2d Cir. 1970); Hamad v. United States Immig. & Nat. Serv., 420 F.2d 645 (D.C. Cir. 1969); Sovich v. Esperdy, 319 F.2d 21 (2d Cir. 1963); Blazina v. Bouchard, 286 F.2d 507 (3d Cir.), *cert. denied*, 366 U.S. 950 (1961); MacKay v. McAlexander, 268 F.2d 35 (9th Cir. 1959), *cert. denied*, 362 U.S. 961 (1960).
120. 18 U.S.C. § 3184 (1970); *e.g.*, *In re* Extradition of Gonzalez, 217 F. Supp. 717 (S.D.N.Y. 1963); Treaty with Venezuela on Extradition, Jan. 19, 21, 1922, 43 Stat. 1698, T.S. No. 675; Treaty with Dominican Republic on Extradition, June 19, 1909, 36 Stat. 2468, T.S. No. 550; Treaty with Switzerland on Extradition, May 14, 1900, 31 Stat. 1928, T.S. No. 354; Treaty with Mexico on Extradition, Feb. 22, 1899, 31 Stat. 1818, T.S. No. 242. There are nearly 100 other like treaties.
121. Jimenez v. Aristeguieta, 311 F.2d 547 (5th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); *In re* Extradition of Gonzalez, 217 F. Supp. 717 (S.D.N.Y. 1963); Ramos v. Diaz, 179 F. Supp. 459 (S.D. Fla. 1959).
122. Karadzole v. Artukovic, 247 F.2d 198 (9th Cir. 1957), *vacated*, 355 U.S. 393 (1958).
123. Chandler v. United States, 171 F.2d 921 (1st Cir. 1948), *cert. denied*, 336 U.S. 918, *rehearing denied*, 336 U.S. 947 (1949).
124. Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); Moser v. United States, 341 U.S. 41 (1951).
125. *See* pages 518–24 *supra*.
126. *See* notes 117–124 *supra*.

Every class of offense listed at the beginning of this article[127] and claimed by the participants to be political seems to be within one of the above definitions and examples. And the participants—Angela Davis, Panthers Seale and Newton, the Berrigans, the San Francisco Stockade "mutineers," the Catonsville Nine, Chicago Seven, Milwaukee Fourteen, New Jersey Eight, the AWOL's and deserters, the draft evaders and avoiders, those arrested for trespass, riot, and other acts in Washington, D.C., mobilizations and sit-ins, even the Attica prison revolters—all claim to have engaged in law violations (if any) to press the government to get out of an erroneous or illegal war, change foreign policy, give up racial suppression, or end practices leading to disenfranchisement.

It may be desirable to ask the question in another way: What criteria might be used to determine which "crimes" are "ordinary" (not to be amnestied) and which are "political" (to be amnestied)? It is submitted that the following are the more important considerations:

1) Has the position for which the prisoner stood now become generally accepted in the community?[128]
2) Has the government activity against which protest was made, been ended?[129]
3) Was the action taken originally as an expression of religion, conscience, or other first amendment right?[130]
4) Were the conditions (prison, race, police activity) such obvious failings of government that the citizenry ought to be encouraged to speak out?[131]
5) Does the policy of the government against which protest was made (*e.g.*, the war) represent a relatively small political group

---

127. *See* page 515 *supra.*

128. For example, public support of official actions in Vietnam has markedly waned. In early March of 1966, a poll of the adult American population showed 61 percent favored bombing North Vietnamese industrial plants and factories. Overall, 50 percent approved President Johnson's handling of the Vietnam situation, and 33 percent were opposed, according to the Gallup Political Index, Feb. 1966, No. 9, at 5–6. But in a poll taken between November 14 and 16, 1969, it appeared that 64 percent of the adult American population approved the way President Nixon was handling the Vietnam situation (Vietnamization and withdrawal of troops). Gallup Opinion Index, Dec. 1969, No. 54, at 2. On the campuses, the polls said that in January 1970, 69 percent of the students polled were in favor of reducing our military effort in Vietnam, while 20 percent favored increased military action. Gallup Opinion Index, Jan. 1970, No. 55 at 19. *See* note 142 *infra.*

129. Typical are amnesties after a war for draft avoiders, AWOL's, and like persons. *See* pages 520–24 *supra.*

130. *See* Freeman, *A Remonstrance for Conscience,* 106 U. PA. L. REV. 806 (1958). Prosecution tends to show a restrictive first amendment application under hysteria conditions.

131. This would cover demands for amnesty in prison uprisings, and racial issues of nearly every kind.

imposing its will upon the citizenry without a clear mandate, thus lacking democratic sanction and bound to elicit protest?[132]

6) Was the original action nonviolent and therefore nearest to protection as free speech?[133]

7) Was the crime one generally condemned by all society as against the peace and good order of the people, with few or no political overtones?[134]

8) Was the so-called political position taken that of anarchy?[135]

9) Even if the original crime for which a person is in jail was non-political, has the matter of confinement turned into a political imprisonment or harassment?[136]

10) Can society expect no serious threat if it releases the prisoners?[137]

It seems quite possible to this writer to formulate proper criteria along these lines, and to set up a board if necessary to sort out borderline cases. The bugaboo argument of "would you release *all* criminals?" has little relevance.

VII. Conclusion

As was pointed out earlier, never in United States history has the problem seemed so large and important. We now have a huge number of unamnestied and unpardoned political offenders—many of whom may be our finest young people and potential leaders. The offenses are backed up all the way to World War I and II. Nowhere else in the world are political offenders treated as common criminals. Even in Greece and some of the most dictatorial countries, they are placed under house arrest or allowed to move to another country. In most noncommunist countries they are amnestied and allowed to try again for political power.[138] We need immediately to erase

---

132. As a part of this it would be proper to consider what position Congress had itself expressed.

133. See the author's various articles on Civil Disobedience: Freeman, *The Right of Protest and Civil Disobedience*, 41 Ind. L.J. 228 (1965); Freeman, *Moral Preemption Part I: The Case for the Disobedient*, 17 Hast. L.J. 425 (1966); Freeman, *Civil Disobedience, Law and Democracy*, 3 Law Trans. 13 (1966); Freeman, *Civil Disobedience and the Law*, 21 Rut. L. Rev. 17 (1966). *See also* Keeton, *The Morality of Civil Disobedience*, 43 Texas L. Rev. 507 (1965).

134. Murder, robbery, felonious assault, and like crimes are of this nature—even if the prisoner claims his repressed and societally produced background is responsible. On the other hand, "normal" criminal statutes, such as trespass and disorderly conduct, can be used for criminal suppression.

135. It may be too much to ask the government to free a person constantly trying to overthrow all government.

136. There are those who feel that the Angela Davis, Soledad Brothers, Jackson, and Seale cases have become "politicized." Time, Sept. 6, 1971, at 18.

137. This would certainly apply to most conscientious objector and Jehovah's Witness cases.

138. Big Minh was amnestied in South Vietnam. In September, 1970, even Franco of Spain amnestied hundreds of political prisoners.

31-658 O - 74 - 31

this blot on American democracy. Even more we need to recruit these critics of society back into the political process of changing society, as most everyone recognizes society needs changing. At Attica, Commissioner of Corrections Oswald admitted that 28 of the 30 prisoner demands should be implemented.[139] It may be small satisfaction to the Berrigans and other antiwar "criminals," but there is now general political agreement on the error of the Vietnam war. Rosa Park's feet and the busted head of many a demonstrator may hurt no less, but desegregation is becoming a reality. The nation has a profound interest in allowing reformists a radical means of shaking us from our lethargy. The more rapid the need for reform, the more radical must be the means of getting public attention and action.

Senator Edward Kennedy has introduced a bill as an alternative to further Selective Service extension which proposes an amnesty "study" for Congress.[140] Senator Taft introduced an amnesty bill on December 14, 1971,[141] and popular support for amnesty is strong.[142] This is a start, but it is not enough. Congress and the President should appoint a Joint Committee to study the whole problem of pardon and amnesty, and recommend immediate action to wipe out all "political offenses" and return all these citizens to where they are needed, in "One Nation . . . Indivisible, with Liberty and Justice for all."[143]

139. Commissioner Oswald is reported to have acceded to all but two of the demands in the early stages of the insurgency. TIME, Sept. 27, 1971, at 22.

140. S. 483, 92d Cong., 1st Sess. (1971).

141. S. 3011, 92d Cong., 1st Sess. (1971).

142. *See, e.g.*, NEWSWEEK, Jan. 17, 1972, at 19. A recent Gallup poll indicated in part that, when asked about amnesty conditioned on alternative service such as that presently required for conscientious objectors, 71 percent of those polled favored amnesty generally, while 22 percent were against it, and 7 percent had no opinion. Of the 71 percent in favor of amnesty, 63 percent favored the condition, while 7 percent were for amnesty without qualification; 1 percent said they were proamnesty, but uncertain about required service. The poll also found that 49 percent favored amnesty for Army Lieutenant William Calley, convicted in the My Lai affair, while 24 percent were opposed. *Id.* at 20.

143. Pledge of Allegiance, 36 U.S.C. § 172 (1970).

Professor FREEMAN. The general statement of the Friends Committee on National Legislation emphasizes the degree to which Quakers over its 300-year history has been concerned with the reconciliation of opposing groups at the termination of various wars.

That history I think is well known and out of that grows our unity with the concept that a general and unconditional amnesty should be granted for reconciliation of the various political positions that have come out of this war; those in favor and those that are opposed.

I would like to point out that there is in America a long history of amnesty and pardon—and here we get into some difficulty with wording of what might be called general pardon by the President and general amnesty by Congress—going back to immediately after the Revolutionary War and coming up through the present time. There are some 40 examples of those discussed amongst other things in the article.

I think that if one looks at the legal history of amnesty, it goes back in most people's judgment to the Greeks, who did use the word amnestia or forgetting or amnesty, as compared to the use of the word "pardon." And the Hebrews had a similar pattern with the Sabbatical Year and the Jubilee Year in which all penalties were forgiven. This comes up through the Roman jurisprudence and to the Anglo-American jurisprudence and there we begin to get the split that causes part of our question, because Parliament in England granted what it called sometimes a general pardon and sometimes it called it an amnesty and the king also granted a pardon acting in his right as executive, whereas when he would promulgate amnesty on behalf of Parliament, he acted in the right of Parliament.

What happened thereafter when we get to this country carrying out the British tradition, the pardon goes to the President under the specific provision of the Constitution and the amnesty power seems to go to Congress under the general, necessary and proper clause and the various clauses with regard to managing the army, the navy and so forth and even such matters as the control of the District of Columbia and the control of buildings, forts and arsenals.

I would point out that in precisely these areas a great deal has been said pertinent to amnesty about the power of Congress when it enacts laws to also free persons from their penalties. For example, the Uniform Code of Military Justice, without which none of the people who ought to be amnestied because of dishonorable discharges or court-martials would have been up for punishment at all.

In these cases it has been recognized specifically that Congress has the right to impose a statute of limitations and it has done so imposing a 5-year period for enforcement of these penalties against individuals.

Amnesty is in essence a statute of limitations, and says that from this time on, we no longer expect that punishment for a particular crime or a particular offense will occur.

If you want me to, Mr. Chairman, I can show you the cases and what has been said in regard to these limitations being a proper way to end prosecutions and on the desirability to get people back in unity and and reconciliation. You can find part of this as to the Uniform Code of Military Justice in the case of *Gallagher* v. *Quinn*, 363 F. 2d 301, certiorari denied 385 U.S. 881 in the U.S. Supreme Court in 1966 where they said Congress has the power to make rules and regulations

for the land and naval forces and that it is proper that the code should include limitations imposed by Congress. And you have at least two opinions of the Attorney General to the same effect going back to the early 1800's (1 op. Att. Gen. 383, 6 op. Att. Gen. 239).

You have a similar position of the U.S. Supreme Court with regard to Selective Service. In *Toussie* v. *United States*, 397 U.S. 112 (1970), where Congress prescribed an obligation to register for all persons between 18 and 26, it was argued by the Justice Department that that was a continuing obligation and that, therefore, the statute of limitations that Congress imposed should end 5 years after age 26. "No" said the Court. It was one obligation to register at age 18 or within 5 days thereafter and Congress had the complete choice as to when it made its statute of limitations run. And they interpreted it as running from 5 days after the age of 18, giving Congress the total power to make that kind of an exception or a forgiving or a forgetting or an ending or a termination by the statute of limitations.

Mr. Rauh read from Burdick against the United States, reading actually from the quotation in the article that I have already referred to and that was a customs fraud case and the president there gave a pardon if a person would testify. Then the court made it clear that where the witness refused to take the pardon, it was different from an amnesty; that a pardon is in the nature of a personal grant and therefore has to be accepted and the individual has a perfect right to refuse the pardon if he wants to. But on the other hand, that amnesty is in the nature of a general statute and applies whether he wants it or not. And that distinction we have to, in my judgment, keep before us at all time. As I understand it, the spokesman for the Justice Department on Friday referred particularly to two cases, the *Garland* case in 4 *Wallace* 333, an early Supreme Court case and also *Brown* v. *Walker*, an 1896 case.

Now the *Garland* case states very clearly, in a paragraph that he apparently did not want to refer to, that Congress cannot bar a person from the practice of law by virtue of his participating in rebellion if the President has given him a pardon because to do so would be a bill of attainder, but the court very clearly and very carefully referred to the English history and the distinction between a pardon and a congressional or parliamentarian amnesty. This is done also in a number of other cases.

In *Brown* against *Walker* case, Congress granted immunity from prosecution if a person would testify. The court there saw the other half of the coin and said that it is perfectly proper for Congress to do this. There are a number of law review and U.S. Supreme Court cases following their decision.

In the *United States* against *Wilson* case, 32 U.S. 150, President Jackson gave a pardon as to certain offenses and not as to others. The Court held that the executive pardon must be pleaded and must be shown to have been accepted. And they specifically said in distinguishing pardon by parliament—and they used the term "pardon" but in my judgment the correct term is "amnesty"—and in distinguishing pardon by parliament compared to pardon by the executive they stated: "The reason why a court must ex officio, take notice of a pardon by an act of parliament is that it is considered as a public law having the same effect on the case as if the general law punishing the offense had been

repealed or annulled," whereas the matter of pardon, Mr. Chairman, went to the punishment.

Well, I could go on and on citing to you any number of cases of this variety. I know of no single case that has ever raised the question of congressional power to grant amnesty.

The history through our jurisprudence is entirely to the effect that it has the power.

I have suggested among other things that there are a large number of persons here that we are considering—and I don't want to play the numbers game, whether it is 30,000 or 35,000 abroad or whether there are 500,000 or 400,000 less-than-honorable discharges—there are a very large number who may be considered to have just prematurely been right about the Vietnam war and they were punished by virtue of the laws, many of which were later interpreted in ways that would not have required their punishment.

And I remind you that up until 1965 under the Selective Service interpretation you had to believe in a divine being before you could be a conscientious objector and that even after that time, most boards were still making a requirement of that in spite of the Supreme Court decision to the contrary.

Another group felt that Congress had been defrauded into adopting the Tonkin Gulf resolution and believed that the war was illegal and unconstitutional and that somebody ought to raise that question, a position later taken by Congress.

There was still another group that felt that the services were extremely racist and that action had to be taken with regard to this and they obtained less-than-honorable discharges or other punishment as a result. There were those who believed in the Nuremberg principle and asserted that principle.

And we could go through a number of others, but I would like to speak to one and I'm sure Father Drinan is concerned about this also and that is the Catholic Church has always taken a position that there are just and unjust wars and, therefore, it is a selective moral question. And I happen to represent the Berrigan brothers in the *Catonsville 9* case. Here were men who took this religious position and paid a penalty for a view that Congress had not put into the selective service law. But that ought not to prevent Congress from viewing it now sometime later as saying that was a moral and responsible and legitimate position and they should be freed by amnesty.

Those are just a few, I think, of the moral issues that are here involved. A number of years ago I wrote an article on a Remonstrance for Conscience that suggests that our whole legal system depends upon the development of the individual conscience because without the public conscience believing in nonviolence and the support of law, we would be unable to have a legal system in the country. And I think that nothing can be of greater priority than for the Congress of the United States to see the moral position here and cause the conflict between sides in regard to this war to be erased from our history.

I would like to make one last comment. That if the Justice Department were taken at full face value to suggest that the President and only the President has ultimate amnesty power, we would be in the strange position where if Congress adopted a law against certain crimes and the President vetoed it and Congress overrode the veto, the

President would then put in a general amnesty and completely overthrow the whole legislative process. That simply cannot be the law of our Constitution.

Thank you.

Mr. KASTENMEIER. Thank you, professor. As a matter of fact, as I have suggested, I think the interpretation that Mr. Ullman was definitive in his conclusions is somewhat mistaken. Actually, in his statement he recites on page 5 the dictum in the *Walker* case as going so far as to suggest that although the Constitution vests the pardoning power in the President, this power has never been held to take from Congress the power to pass acts of general amnesty.

Professor FREEMAN. That is the position I would take.

Mr. KASTENMEIER. Yes, I think that should be clear.

Professor FREEMAN. I don't mean to misquote him.

And again I wish to thank the committee for the opportunity to appear here today.

Mr. KASTENMEIER. I only made the observation merely for the purpose of putting the remarks of the Deputy Assistant Attorney General in proper context.

I am wondering, does Mr. Kulberg want to make his statement?

Mr. KULBERG. Although I certainly support everything that Professor Freeman has stated, I am speaking for a separate organization known as the Friends Meeting of Washington.

I apologize for having been late in providing my testimony. It was a case of a one-man activity and, therefore, I was delayed in getting it to your counsel.

There is a dictum that a lawyer should not be his own client. I suppose a man should not be his own secretary also.

I also apologize for the typing which I have here in my statement.

In my prepared statement, which I hope will be placed in the record, I first point out how our congregation, the Friends Meeting of Washington, has supported war resistance during the time that the conflicts were taking place in Indochina and subsequently the actions that we have taken over the last several months in support of the whole matter of amnesty for war resisters.

I suggest then that there are four principles to which amnesty legislation should be directed, four criteria against which it should be checked.

The first of these is that the amnesty should be as inclusive and widespread as possible. We ask that it be applied to all cases arising from war resistance regardless of the statutes or regulations held to be violated.

Second, that the amnesty should be granted as one or more class actions, not through a case by case process. However, there should be a reviewing authority to settle disputed cases before they go to the courts and the burden of action and proof should be on the prosecution.

Third, the amnesty should be unconditional. No sanctions, alternative service, proof of character or other suggestions that have been made should be required of those who were being amnestied.

Lastly, that the amnesties should be complete and that it should eliminate all legal impediments and restore all rights accruing to those who were amnestied.

I then applied these particular points to the legislation that this committee has before it. We of course reject the two resolutions that have been proposed opposing amnesty and point out that in the matter of inclusiveness, H.R. 236 does eliminate overall Federal laws and regulations, although there may be additional ones.

And I wonder if perhaps there should be in any legislation that is passed a provision for either the reviewing board, if one is established, or the courts, to consider disabilities under other laws if those should become apparent in the future.

Also, I point out that H.R. 674 does make provision for violation of State statutes. I believe it is unique in that regard.

The matter of restoration of citizenship I think is adequately dealt with in both H.R. 236 and other bills in making it possible by petition to a district court.

Then there is the whole question of a reviewing body. I deal with that in the testimony by pointing out that there is an amnesty commission in two of the bills and the National Amnesty Board in one of the other bills.

The sort of thing that I propose here for the committee's consideration is perhaps a little different from any of those that have been described so far.

It seems to me that what we want to have established is a temporary board. I think that it would be one that should be at least around for 5 years or so in order to give adequate time for these questions to be settled for people and perhaps even then be subject to extension if necessary, but at least with that sort of a life span.

What it essentially ought to be is an appellate body to which officials who wish to challenge the granting of amnesty, would apply rather than placing the burden upon the individual who has been amnestied to establish his right to it. In given situations, say, for example, if a person were to attempt to exercise his right to vote, which might have been denied because of his having a prison record, it would then be incumbent upon the official to make application to the board concerned and ask for a ruling. Whatever the decision, it could then be appealed to the courts.

I also suggest that the procedures be as informal and as simple as possible. There is quite a burden on citizens in these days when even the lawyers have lawyers, and we want to try to keep this as easy on the citizens in general as possible.

Therefore, I think that the burden in this case ought to be on those who challenge anyone who has received the remedy of amnesty in any given circumstances.

That is different, as I say, from the way it is dealt with here, but I think it offers something of value and I hope your committee will give it some serious consideration.

As I did mention earlier, we do reject the matter of conditions. I think we feel that granting amnesty is something that is called for in the present time or as soon as possible certainly and that no conditions are necessary for the time when it goes into effect.

I was impressed by section 3 of H.R. 236, which does indicate five effects in terms of restoration of rights to anyone who is amnestied and I think these ought to be incorporated into any legislation which is passed.

Two of the other bills, H.R. 674 and H.R. 13001 do deal with it briefly, but I like the wording in H.R. 236.

These were some of the points we raised as far as specific bills.

Lastly, we do deal with this matter of discharges from military service. I suggest perhaps that the question of discharges be dealt with as a past event and for the future by giving the person who is discharged from the military service a single discharge category. In other words, that he would be discharged from the military service and that would be it. If there were certain offenses which he committed while in the military service, these should be dealt with during the time that he is in the military service and should not be a burden upon him in the future. In other words, this is not something that should carry over into the civilian life in any way; that anything that is done, is done within the military, and is distinct from civilian life in this country. I think that is an important provision regardless of the offense.

I may say, I am speakng personally there. Our group has only dealt with this in the concept of amnesty for war resisters. My own concern though is that this broader matter be dealt with.

I would also like to point out, as I deal within the testimony here, that the machinery for conscription still exists. There are still prosecutions taking place under the Military Selective Service Act and this to me is really a disheartening matter.

I spoke recently to one of the people who was concerned with draft evading in the past, sort of anticipating that their case load would have gone down, and he said that on the contrary, at the present time they are actually having perhaps as many people as they did at the high point because the Justice Department apparently is prosecuting as many of these cases as it can at the present time.

And we urge you again, as Members of Congress, to completely dismantle the Selective Service System. We feel that the long-term interests of the Republic are going to best be taken care of by that particular action.

And even in a more general way, we hope that we will move away from the utilization of military responses to international questions. The whole question of nonviolent national defense, which is certainly not before you today, but nonetheless it needs to be on our minds, is something that we would urge to your attention and hope that the Members of Congress give serious attention to ways of getting us out of the situation in which there will be future Vietnams, World War II's or anything else of a military character.

Thank you very much for having heard me on that.

Mr. KASTENMEIER. Thank you.

[The statement of Raoul Kulberg follows:]

TESTIMONY OF RAOUL KULBERG

REGARDING AMNESTY FOR WAR RESISTERS AND RELATED MATTERS

Mr. Chairman: I am Raoul Kulberg of 3916 McKinley Street, NW, Washington, D.C., 20015. I am appearing today on behalf of the Friends Meeting of Washington, a Quaker congregation located at 2111 Florida Avenue, NW, Washington, D.C., 20008. I am alternate chairman of the Meeting's Peace Committee.

Our Meeting has taken several actions showing its support of amnesty for those who resisted the wars in Indochina. During the time of active U.S. military involvement in Southeast Asia, the Meeting supported vigils, demonstra-

tions, lawsuits, representations to Congress, letters to and meetings with officials and other actions in order to halt at least this American participation.

On 16 February 1969 the Meeting accepted a minute offering sanctuary to "those draft resisters whose stand is the result of conscience and whose resistance is non-violent." This commitment was most recently manifested in the case of Bruee Baechler, a young Friend from Hartford residing in Washington. Bruee refused to register for the draft which many Americans mistakenly think ended last June. The Meeting provided sanctuary until his arrest. (He is now awaiting trial.)

In November the Meeting sent a letter to the Washington press urging amnesty as a gesture of reconciliation during the holiday season. On New Year's Eve, after a Meeting for Worship, local Friends held a vigil at the White House urging amnesty. Most recently the Meeting approved my appearance before this Committee. Although I am here solely as a representative of the Friends Meeting of Washington, our activities have often been in conjunction with Quakers from the other National Capital area Meetings. As you will know from the testimony of the Friends Committee on National Legislation, Baltimore Yearly Meeting, consisting of Friends living in the area from Southeastern Pennsylvania down into Virginia, has minuted its support for amnesty.

Let me first suggest the principles regarding the kind of amnesty we want. I will then relate those principles to the bills and resolutions before you. Finally, I will touch on some related matters.

The principles are these:

1. The amnesty should be as inclusive and widespread as possible. We ask that it be applied to all cases arising from war resistance regardless of the statutes or regulations held to be violated.

2. The amnesty should be granted as one or more class actions, not through a case by case review process. However, there should be a reviewing authority to settle disputed cases before they would go to the courts. The burden of action and proof should be on the prosecution.

3. The amnesty should be unconditional. No sanctions, alternative service, proofs of character or other burdens should be placed on those amnestied.

4. The amnesty should be complete. It should eliminate all legal impediments and restore all rights accruing to those amnestied.

The amnesty may be granted in one action or in several. The decision on this is political with regard to what can be accomplished by the Congress or the President at any given time. It is legal in that several statutes and regulations are involved. Howver, it should be our national policy to accomplish an amnesty that meets all the four principles for all war resisters.

With this as our stand, we, of course, call for the rejection of H. Con. Res. 144 and 385 and any other expressions opposed to amnesty.

H.R. 236, H.R. 3100 and H.R. 5195 are essentially the same; hereafter my references to H.R. 236 include the other two bills.

As regards inclusiveness, H.R. 236 enumerates several Federal laws and the "regulations and policies promulgated pursuant thereto." I believe that a careful review of the disabilities suffered by war resisters should be made to assure this list does not overlook any pertinent law or regulation. Perhaps a general provision could be added granting some discretion to a reviewing body and the courts to remove any disabilities shown to have arisen under any other statute by reason of war resistance. H.R. 674 adds the useful provision of amnesty for those offenses were against State laws.

H.R. 236 and several of the other bills provide the best remedy for the restoration of citizenship by making it available upon petition to any district court.

An Amnesty Commission is established by H.R. 236 and H.R. 10979, consisting of five persons appointed by five separate elected officials. H.R. 13001 sets up a National Amnesty "Board of three members appointed by the President by and with the advice and consent of the Senate. At this time, I would tend to favor the former approach as more likely to advance the case of amnsty.

H.R. 236 implies a temporary commission but sets no time limit. Either this provision or at least a five-year life span should be accorded the reviewing commission.

The reviewing authority I propose would not be for the purpose of case by case review. Rather it would be an appelate body of first resort in any cases where the effects of amnesty were challenged by any public official. Amnesty, including full restoration of rights, would be presumed to have been accomplished unless an official appeal in a given case was made to the "amnesty review board."

Decisions of the board would be appealed by either party to the Federal courts.

My intent in this proposal is to keep as much added burden as possible from the shoulders of the amnestied resister and as many cases as possible out of the courts. As noted above, the burden of proof should rest on the challenger; the procedures should be as informal and simple as reasonable discretion would allow.

We clearly reject the conditions for amnesty that would be imposed by H.R. 674, H.R. 2167, H.R. 10979 and H.R. 13001. In particular, we reject the open-ended provision of H.R. 674 for conditions "that may be authorized or imposed by the President of the United States" If there are good reasons for granting amnesty, as we firmly believe there are, then no imposition of conditoins is called for.

The five "effects" of Section 3 of H.R. 236 should be incorporated into any amnesty legislation to restore the rights and status quo ante (at least legally) of any amnestied resister. H.R. 2167, H.R. 10979 and H.R. 10980 fail to mention restoration of rights. H.R. 674 and H.R. 13001 both briefly state that the amnesty they authorize shall have the effect of restoring all civil and political rights that have been lost or impaired.

Mr. Chairman, that puts the bills under consideration in the perspective of the principles we propose. There is no one bill that meets all the criteria. H.R. 236 is clearly the closest to the need. We feel it should be redrafted to encompass some elements from other bills plus the proposals that we and others are putting before your committee. We will welcome the opportunity to participate in such a redrafting.

We also want to direct your attention to some broader related matters. The first of these is the question of discharges from military service.

There have been successful efforts to assure people in the Armed Forces that they share constitutional rights with the civilian population. However, military life is still recognized as something distinct. It has its own ways, both formal and informal, including its own criminal code, the Uniform Code of Military Justice.

We believe that any punishments for military offenses should be accomplished within the military and not spill over into civilian life. When a person's military service is completed, he should be discharged without prejudice. There should be no ranking of discharges that penalizes a person outside of military life. Once outside military jurisdiction there is no opportunity to alter, rectify or expunge one's discharge status. Therefore, there should be a single discharge classification.

We have been chagrined to learn of the high rate of prosecutions under the draft law (the Military Selective Service Act). We ask that these be brought to an early halt. As I mentioned, our Meeting has recently witnessed the case of a fine young man who is being attacked under these provisions. I am also concerned about the fate of my own son, soon to be of draft age.

Through this Committee we want to alert our fellow citizens to the fact that the conscription machinery still exists; only the power to induct has expired. The long-term interests of the Republic will best be served by the complete dismantling of the Selective Service System.

There is the pressing necessity for our Nation to find its path away from military responses to international questions and toward the development of non-violent national defense. This will be a long and difficult road. I hope it is not too late to begin. It is certainly not too soon. Amnesty for those who resisted war is a step that will help us make that journey toward a world living by the ways of peace.

Mr. KASTENMEIER. I have just one question of Professor Freeman and that is a hypothetical in terms of exercising power. If it came to pass that the Congress was in the process of passing a general amnesty law, not precisely unconstitutional but somewhat in that direction, and the President before it passes preemptively announced a system with a review board, a system of handling the same area in amnesty, and announced that this was pursuant to his power of pardon or reprieve and that he would regard any passing of an act by Congress which was protective, to be null and void as interference with his own exercise of pardon and reprieve, then as the friend of the Court how would you advise the reconciliation of that matter?

Professor FREEMAN. I think the Court would have to decide that Congress still has the right to adopt a general statute, just as it has the right to repeal any statute that existed in the past, and the general rule is in a criminal statute, when it is repealed, it nullifies all future prosecutions. You could do that.

He on the other hand has a perfect right right, it seems to me, to grant pardons. And according to one Supreme Court case he has the right to grant pardons even before a person has been convicted, general pardons so that to that degree he could act in that manner. But also then I would think the Court would have to determine that your statute took in a sense preeminence, because there might be those who did not want a pardon, who wanted rather to have a general amnesty. So the statute should stand and those who wanted pardons, could get pardons.

Mr. KASTENMEIER. Thank you.

Mr. KULBERG. Mr. Chairman, just in that regard. Although I am not either a legal historian or a lawyer, it seems to me the various amnesties that were granted after the Civil War to people who had been in rebellion against the United States were granted over a period of time and that there were several of them which apparently became more inclusive as time went along. And it seems to me the President could certainly act within narrow bounds and if the Congress then chose to act in wider ones, why one could keep increasing the breadth of the amnesty that is granted without being in conflict with one another.

Professor FREEMAN. There are two things I need to say about that Civil War period. I think Mr. Sandman raised the question, was there ever a general pardon or anything of this sort given to persons who had less than honorable discharges or court-martials established against them. And the answer is yes. President Jackson gave a general pardon on a peculiar condition—and I do not think anyone speaking here for amnesty will be unwilling to accept that condition though they will not accept most—and that was that all persons should be pardoned provided they never try to enlist in the army.

Mr. KASTENMEIER. That is an interesting historical footnote. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you very much. This has been an extraordinarily helpful statement. I am wondering if you would explain just a bit on page 5 the words that there has been no general amnesty in America since 1933.

Was that unconditional then? What does "general" mean in that sense?

Professor FREEMAN. I am a little troubled by exactly what words to use myself. Franklin Roosevelt's amnesty made a "general" declaration that those who had been guilty of violating the espionage laws and the selective service laws be amnestied. And he added "or generally pardoned."

Now, that is the broadest one that we have had. And from then until now we only have the Truman, the 1946 one.

Mr. DRINAN. Well, was that 1933 one by the President, was that only for people who had already been convicted and who had served their time?

Professor FREEMAN. That is correct.

Mr. DRINAN. It did not reach the people who had never been apprehended?

Professor FREEMAN. No, that is correct.

Mr. DRINAN. Why do you call it an amnesty then?

Professor FREEMAN. I use it because the term was in general causes rather than in specifics and that comes over close at least to the concept of amnesty, which is to speak in gross terms.

Mr. DRINAN. Do you think that the Congress could have done that very same thing in 1933?

Professor FREEMAN. They could have and they could have gone further I am quite sure.

Mr. DRINAN. Do you think that there is any taste for the proposition or for the possibility that the Congress could pass an amnesty law that the President could not veto?

Professor FREEMAN. No; I am inclined not. Because I think Congressional amnesty power comes largely from article 1, section 8, clause 18, I think, the general and necessary and proper clause coupled with the right to control the Army and so forth. And this would leave his power of pardon such I think that he would say this is a statute like all other statutes and I have a right to veto it.

Now, you can pass over his veto if you want to, but there is no exception to that right I am afraid.

And you will find in my article that I make an even stronger argument by saying, if any argument can be made, for the President's position of a general pardon in that the language of the Constitution with regard to his power of general pardon is not "crimes" but "offenses." And "offenses" can be viewed as prior to conviction and, therefore, a general pardon for people who have not yet been even charged and convicted or sentenced would come under that. So I speak for a Presidential general pardon and/or a congressional amnesty.

Mr. DRINAN. So the distinction you make is extraordinarily useful and we have not had testimony precisely on this before. I am sure this question will continue to arise.

Well, I have other questions based upon your article and this statement, but I will yield to the chairman. Thank you.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. Thank you, Mr. Chairman. I want to welcome Professor Freeman here who has a connection with Cornell University Law School, as I do. Thank you for your testimony, Professor.

The committee is glad to have your law review article entitled "A Historical Justification and Legal Basis for Amnesty" and, Mr. Chairman, did I understand that this would be accepted as part of the record?

Mr. KASTENMEIER. Yes; that is correct. Your understanding is correct.

Mr. SMITH. And I am sure that it will be helpful to the committee from a historical basis and a legal basis.

Professor Freeman, I have one question for you. I think you said that President Johnson after the Civil War granted an amnesty among several apparently on the condition that the beneficiaries would not serve in the Army again.

Professor FREEMAN. President Jackson after the 1812 War.

Mr. SMITH. Oh, I thought it was the Civil War because I knew that President Johnson did grant some amnesty to Confederate soldiers and I could see why he wouldn't want them to serve in their Army.

Thank you very much. One question, Mr. Kulberg. You indicated in your statement about the continuation or noncontinuation of the Military Selective Service Act that you were concerned about the fate of your own son soon to be of draft age. I wonder what was the nature of that concern because the only requirement now of course is one to register after you get 18 years of age and there is no presently existing requirement of induction or authorization for induction.

Mr. KULBERG. Yes; I realize that, Mr. Smith. The reason of my concern was in the context of my comments about Mr. Baechler, who also faced the same situation and did refuse to register under the statute at the present time.

Now, I have no way of knowing quite frankly as to what my son's intention will be. I just know him to be very much a young man of determination and independence. And whether he will decide in the nature of his belief to register or not to register, and I will support him in either case, I am just concerned if he should happen to decide not to register, that there is really no gain for the country in this particular case and there certainly would be considerable loss in his case.

Mr. SMITH. Well, that is a good answer I think. From my point of view I would think that there would be little danger to a person's conscience or otherwise in registering because, if a Selective Service System is ever started again—and I hope it would not ever be necessary—but if it is, with induction and the rest of it, if the past is any guide for the future, I would say that all of his rights would be protected as far as his conscience is concerned.

Mr. KULBERG. Well, I think we are dealing with something perhaps not entirely new, but this matter of generations, Mr. Chairman. When I was closer to draft age myself, I did take the position as a conscientious objector. As it did work out, I did not have to serve—and this was not necessarily because of the conscientious objector status—because by the time my case had gone through various reviewing bodies and that sort of thing the draft board got around to my final 1–A and I was then over 26 years of age. So they sort of dealt with it by administrative delay, but I at least felt at the time that registering as a conscientious objector was appropriate under the law.

I think many of us subsequently know and have been made more sensitive to this matter in terms of cooperation even to this extent, and that many young men were brought to the position during the Vietnam conflict of refusing to cooperate with the conscription system even to the extent of registration.

Bruce Baechler, who I described in my testimony, has taken the position that in good conscience he does not feel that he can even cooperate with the system to that extent at the present time.

Quite frankly if I were once faced by the situation of having to register, I am not quite sure. I am sort of in a bureaucratic trend of mind and I tend to go along with these things, but I think there are problems when you do cooperate with machinery within a democratic society, as I feel we are in general, whether one can really safely cooperate with the machinery. It is this whole question of the machin-

ery that is raised by young people, about cooperating with the system.

I think it is a very serious one we have to deal with. In contrast with Mr. Sandman's comment that whether or not you can deal with each law as it comes along, I think in a sense when it comes to the serious matters, that each of us does sort of have to make an individual decision certainly not for frivilous matters for each of us to just discard legal responsibilities that are placed upon us, but neither I think can we deal with the situation by saying "Well, it is the law so I will go along with it regardless."

I think it is sort of a kind of situation that authoritarian states have found themselves in the past when the citizens have been unwilling to go along with it.

Certainly the papers in this country have been praising Mr. Nixon and his speaking out. He was against Soviet law. And if one takes a strict view on the law-and-order situation, the Solzhenitsyn stand was clearly one against it, but I think many of us feel that he took an important position that a human being must take some times.

Mr. SMITH. Perhaps the Soviet Government would have been better had they granted him amnesty.

Mr. KULBERG. I would think so. I think the best interest of the Soviet Union would be served by that as I feel the best interest of the United States would be served in this case.

Mr. KASTENMEIER. The gentleman from Iowa.

Mr. MEZVINSKY. I just want to make a comment concerning your article that appeared inthe Arizona State Journal and I assume this was volume 1971, but it was probably put out in 1972, is that right?

Professor FREEMAN. Right.

Mr. MEZVINSKY. You pointed out—and I thought it was very interesting—on page 533 that "In most non-Communist countries you do have an amnesty and they are allowed to try again for political power." Then you also recommended at the very end that we should set up a joint committee to study the whole problem of pardon and amnesty.

Now in your statement some 3 years later I gather what you are saying is we do not necessarily have to move into a joint committee to study it, but rather we should instead take the action regarding unconditional amnesty. Would you care to comment on that?

Professor FREEMAN. Yes, I am saying thank you for having the dialog here before this committee since no other committee was formed. You are quite correct about the article there. And I also point out at one point there—and many people would be surprised at this—a list of countries that granted some sort of amnesty after World War II.

And I make a rhetorical comment here in the testimony, that I have found that at the end of World War II we did in fact amnesty over 1 million West Germans and over 1 million Japanese for war crimes and what a travesty it would be if we could give 2 million "enemies" amnesty and could not amnesty our own sons and daughters.

Mr. MEZVINSKY. Thank you. I just wanted to have your remarks on that subject for the record. I appreciate both of these pieces of testimony. Thank you.

Mr. DRINAN. Mr. Chairman?

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. One very difficult question for me that I have been meaning to ask for years: Is there any case for saying that Anglo-

American law or common law in all of the countries to which it has gone, has a tradition of giving amnesty and that these countries have adopted the common law and do in fact give amnesty more readily than we do?

Professor FREEMAN. I think that Amnesty International, which has studied this whole area, has made that general kind of statement but I do not know that it stands up because in reality many of the South American countries, for example, have granted amnesty in the Western Hemisphere.

Mr. DRINAN. Thank you very much.

Mr. KASTENMEIER. Thank you both very much.

And Ed Snyder, I want to recognize you as joining the other witnesses at the table. We welcome you as well and we are pleased at the contribution you all have made. It will be invaluable for the purposes of this committee.

Professor FREEMAN. Thank you very much.

Mr. KASTENMEIER. The next witness is Mr. James Struve, representing Wisconsin amnesty project.

TESTIMONY OF JAMES STRUVE, REPRESENTING THE WISCONSIN AMNESTY PROJECT, ACCOMPANIED BY EDWARD DAMATO, NATIONAL COORDINATOR, VIETNAM VETERANS AGAINST THE WAR, CHICAGO, ILL., AND SANDRA RUTHERFORD, VANCOUVER AMERICAN EXILE ASSOCIATION

Mr. STRUVE. Thank you, Mr. Kastenmeier. My name is Jim Struve and I will try to be brief. I would like to request, if there is any time when I am done, that two others be allowed to share their opinions. Edward Damato from the Vietnam Veterans Against the War and Sandra Rutherford from the Vancouver American Exile Association.

Mr. KASTENMEIER. I am sorry but we are going to have to make the same determination we made with respect to them as we did with the other witnesses.

I must tell you and the other people in this room that there are hundreds of organizations and persons and families and mothers and others who have requested to appear.

We have invited a number of persons and organizations to submit testimony and indeed we will have, as I indicated earlier, I think some 10 or 15 statements from people in exile submitted for the record.

There are a number of other witnesses who have come at least as far as you have, Mr. Struve, who are yet to be heard from today. And with respect to them, I must respectfully decline your offer that other witnesses appear.

We are however most grateful to you that you have come.

Mr. STRUVE. Thank you. I respect your judgment and I hope at some point that more adequate time is provided for them.

My name is Jim Struve of Madison, Wis. and I appear before this committee today representing the Wisconsin Amnesty project, to speak in support of universal and unconditional amnesty.

The Wisconsin Amnesty project was formed in March 1973 in response to the initiative of two farmers from a rural Wisconsin

community who felt that it was time that concrete actions be undertaken to achieve a universal and unconditional amnesty. The members of the Wisconsin Amnesty project support this stance of universal and unconditional amnesty. To achieve our goal, we have focused on the task of general education and informational activities to promote increased public discussion of the issues that are relevant to such an amnesty.

I attached supplements to my statement, which explain our organization and who our membership is.

Opposition to the war in Indochina was not only a question of morality and conscience, but also reflected a choice between conflicting laws. The purpose of this statement is to focus on the more fundamental issue of the illegality of American participation in the Indochinese war and the resulting consequences of resistance by large numbers of the American public to unpopular U.S. military policies.

We find it is difficult to determine just how many Americans actually engaged, openly or covertly, in opposition to American military policies in Indochina. Other persons who testify may suggest widely varying numbers of people who would be affected by an amnesty. An attached supplement contains a list of some of the figures our organization has compiled. We believe 500,000 Americans is a very conservative estimate to suggest the scope of the problem we are dealing with.

We believe that an amnesty should apply to all Americans for there are few, if any, U.S. citizens whose lives were left untouched by U.S. involvement in the Indochina war.

To argue about who was correct and who was wrong seems not only an endless debate, but also a futile and wasted use of our human resources. Amnesty derives from the Greek word amnestia which means "not remembering". It is a way legally to undo what the law itself has done. As Ramsey Clark has said, amnesty does not condemn nor condone an act. Although we cannot ignore the past, we must legally forget our cynical need to avenge our past.

Recognition does need to be given to the difficult dilemma that was faced by young Americans of draft age. Many of our country's youth realized that there was no legal declaration of war to authorize the conduct of U.S. foreign policies in Southeast Asia; yet the Selective Service laws compelled service in the military forces that would carry out those undeclared policies. Furthermore, although few people could articulate the details of international law, a dilemma resulted from a consciousness among many young people that cooperation with Selective Service laws implied some kind of violation of international codes for the conduct of warfare, while compliance with these international codes required noncooperation with American laws, and attendant criminal prosecution.

This sense of legal dilemma was clearly real: very precise international treaties concerning the conduct of war were set forth by the Hague Conventions in 1899 and 1907 as well as by the four Geneva Conventions of 1949. The United States signed those international treaties, becoming a party to them, and such international agreements must not be in conflict with the laws of our land.

As amnesty is being discussed now, however, those persons who chose illegal forms of resistance to national military policies have been forced to assume an unfair responsibility for a war which is emerging

as the most unpopular conflict in our country's history. Resisters are being made the scapegoats for the disturbance and discontent that the war created in American society.

But do we not all share responsibility for this war? How many Americans paid taxes to support an inflated Defense Department budget that subsidized our military involvements in Southeast Asia? How many American political leaders consented to the recommendations of military experts during the era of the Indochina war?

To suggest conditional amnesty only perpetuates discrimination against those persons who chose to act out their opposition to the war openly. An argument for conditional amnesty overlooks the fact that many young Americans faced no alternative but illegal resistance to the war, while hundreds of thousands of young men favored by fate found ways to circumvent personal involvement in the Indochina war by legal but arbitrarily available avenues. These options, such as school and job deferments, were forms of noncooperation acknowledged by every member of Congress who voted to support the Selective Service System. This kind of noncooperation was also endorsed by the sentiments of a large sector of the American public. Unfortunately, local draft boards varied tremendously in their interpretation and application of provisions of the system.

Even more clearly, conditional amnesty violates the meaning of the word amnesty itself: forgetting. The mechanics of a conditional amnesty require some form of review boards; which would seem administratively impossible, given the large numbers of people who are in need of amnesty. Furthermore, review boards would only serve to reinstitute the same discriminatory and judgmental decisionmaking process against which citizens concerned with civil rights voiced their opposition during the draft period.

Undoubtedly, some persons whose conduct has been morally questionable would benefit from a universal and unconditional amnesty: both those who performed violent acts of opposition to American military policies as well as those who carried out violent acts of war against human life by their participation in those military policies would be amnestied. We recognize that there will be injustices in granting amnesty in any form; however, we feel that the injustices that will result from a universal and unconditional amnesty will be less than would result from the inclusion of any conditions.

Our stance places us in opposition to all legislation that has thus far been introduced to deal with the need for an amnesty. We cannot support any legislation that does not encompass universal amnesty; we cannot support any legislation that perpetuates the vindictiveness of conditional requirements in granting an amnesty; we cannot support any legislation that requires the implementation of review boards to allow the opportunity for discriminatory judgments of individual war-related activities.

We are dismayed by the reluctance of the American Government to undertake more positive steps to respond to this pressing need for reunification of the American people. American democracy in the 1970's stands in sharp contrast to the compassion displayed by our Nation following earlier wars as well as to the policies that have been undertaken by other nations. For example, several European nations granted amnesties to persons engaged in the compromising activities

31-658 O - 74 - 32

following World War II. Japan granted a sweeping amnesty to 1,300,000 of its citizenry following World War II.

So it is in this spirit of regeneration that we request the Congress of the United States to enact legislation to allow for universal and unconditional amnesty. To resolve all the specific details of such an amnesty will, undoubtedly, be a difficult task, but one which is essential to restore stability to the lives of hundreds of thousands of Americans who would benefit from such congressional actions.

We feel an amnesty must be universal, for which American among us is really free of the need for some form of amnesty regarding the Indochina war?

We feel an amnesty must be unconditional, for to sit in judgment of the correctness of any American's response to the Indochina war is to perpetuate the discrimination which so characterized this controversial war.

We feel an amnesty must be sweeping, for neither Congress nor the President made a formal declaration of war, so it is difficult to decide just how far back in time an amnesty should extend. We might suggest an amnesty granted now should apply to all living Americans. That would include those persons from the Korean war and World War II who were never extended such an act of forgetting.

If Congress is hesitant to undertake steps toward the granting of an amnesty because of an uncertainty about what the American public feels about this issue or because you cannot resolve the specific details of an amnesty, I would strongly suggest that members of this committee, and others as well, conduct public hearings within your home districts to hear from your voting constituency. Failure to employ the democratic process of local public hearings does not justify Congresspersons remaining in Washington to rationalize inaction on this issue.

I might add to my statement that such groups as the one that I represent, the Amnesty Project of Wisconsin, and others across the country would be very willing to cooperate and assist in setting up such local hearings. I think the discussion I heard prior shows how difficult it is going to be to resolve all of the issues involved and I think one of the ways we can hear from large numbers of people is to get right back at the grassroots level and allow the opportunity for both sides to speak out as much as they can.

Thank you.

Mr. KASTENMEIER. Thank you. Incidentally, you come from Wisconsin?

Mr. STRUVE. Right, that is where I work.

Mr. KASTENMEIER. I would add here that I do endorse local forums on such issues as this. I believe one was held in my district and, as a matter of fact, whatever may be the result of these hearings, they ought to have an effect of justifying or at least of supporting a national dialog on the question.

Now that the war is over I personally think it is appropriate to see whether this issue can be resolved by moving forward and doing something positive. The question is can we, and, if so, what can we do?

So your contribution in this respect is appreciated.

The gentleman from Massachusetts, Mr. Drinan, do you have any questions?

Mr. DRINAN. No. I want to thank you for your testimony and for your contributions and for your statement. Thank you.

Mr. KASTENMEIER. The gentleman from New York.

Mr. SMITH. Thank you, Mr. Chairman. Thank you Mr. Struve, for coming and giving us your testimony from the Wisconsin Amnesty Project. I have one question I am curious about.

You made the statement that Japan granted a sweeping amnesty to 1,300,000 of its citizens following World War II. What was that for? Why were there 1,300,000 Japanese that the Japanese Government had to grant amnesty to?

Mr. STRUVE. The specifics of that I am afraid I would have to look up. All I know it was for what they called compromising activities and at some point there was enough dissension in the ranks that people were not following military policies of Japan to the letter and there were enough people to constitute 1,300,000 who were affected by that.

I think one of the supplements that was put into the draft of the American history in the Indochina war makes reference to that.

If you want, I can look up the exact source of that and supply it to the committee.

Mr. SMITH. Would you supply that for the committee?

Mr. STRUVE. Yes, I can.

Mr. KASTENMEIER. You may send it to me or to the committee.

The gentleman from Iowa.

Mr. MEZVINSKY. Thank you, Mr. Struve. I gather you are a communitywide group. As such, how did you form your organization? Do you have many students? Can you give us some background on how you were formed and how you put the package together concerning the Wisconsin Amnesty Project?

Mr. STRUVE. Yes, we have gotten very little support in our efforts with students. We are basically nonstudent.

As I said, last winter in about March, two farmers from the rural community came in and started pricking the conscience of some of us who were more active in the city of Madison and asked what we were doing on amnesty. Quite frankly, we were not doing anything.

So through a series of meetings and getting people from the legislature, church groups, and so on, we formed what we called the Wisconsin Amnesty Project, which is a statewide organization.

Some of our membership includes the Wisconsin Council of Churches, the American Civil Liberties Union, the Women's International League for Peace, the Methodist Church, the Presbyterian Church, the Catholic Church, Catholic priests, and so on. We have been engaged primarily in a statewide speakers bureau, statewide dissemination of news and setting up forums with people at the local level and such other activities.

We have no membership as such, but these groups are members of the forum of the Wisconsin Amnesty Project and act to facilitate group action in the communities.

So most of our work is outside Madison. That constitutes a very small part of our activities and what we do there.

Mr. MEZVINSKY. Thank you very much.

Mr. KASTENMEIER. Thank you. That was very illuminating. Thank you for your statement and your appearance.

Mr. KASTENMEIER. Mr. Struve's statement and addendum will be placed in the record.

[The documents referred to follow:]

AMNESTY TESTIMONY GIVEN TO HOUSE JUDICIARY SUBCOMMITTEE

I am Jim Struve of Madison, Wisconsin and I appear before this committee, representing the Wisconsin Amnesty Project, to speak in support of *universal* and *unconditional* amnesty.

The Wisconsin Amnesty Project was formed in March of 1973 in response to the initiative of two farmers from a rural Wisconsin community who felt that it was time that concrete actions be undertaken to achieve a universal and unconditional amnesty. The members of the Wisconsin Amnesty Project support this stance of universal and unconditional amnesty. To achieve our goal, we have focused on the task of general educational and informational activities to promote increased public discussion of the issues that are relevant to such an amnesty.

Opposition to the War in Indochina was not only a question of morality and conscience, but also reflected a choice between conflicting laws. The purpose of this statement is to focus on the more fundamental issue of the illegality of American participation in the Indochinese War and the resulting consequences of resistance by large numbers of the American public to unpopular U.S. military policies.

It is difficult to determine just how many Americans actually engaged, openly or covertly, in opposition to American military policies in Indochina. Other persons who testify may suggest widely varying numbers of people who would be affected by an amnesty. An attached supplement contains a list of some of the figures our organization has compiled. We believe 500,000 Americans is a very conservative estimate to suggest the scope of the problem we are dealing with.

We believe that an amnesty should apply to *all* Americans, for there are few, if any, United States citizens whose lives were left untouched by U.S. involvement in the Indochina War.

To argue about who was correct and who was wrong seems not only an endless debate, but also a futile and wasted use of our human resources. Amnesty derives from the Greek word *amnestia* which means "not remembering". It is a way legally to undo what the law itself has done. As Ramsey Clark has said, amnesty does not condemn nor condone an act. Although we cannot ignore the past, we must legally forget our cynical need to avenge our past.

Recognition does need to be given to the difficult dilemma that was faced by young Americans of draft age. Many of our country's youth realized that there was no legal declaration of war to authorize the conduct of U.S. foreign policies in Southeast Asia; yet the Selective Service laws compelled service in the military forces that would carry out those undeclared policies. Furthermore, although few people could articulate the details of international law, a dilemma resulted from a consciousness among many young people that cooperation with Selective Service laws implied some kind of violation of international codes for the conduct of warfare, while compliance with these international codes required non-cooperation with American laws, and attendant criminal prosecution.

This sense of legal dilemma was clearly real: very precise international treaties concerning the conduct of war set forth by the Hague Conventions in 1899 and 1907 as well as by the four Geneva Conventions of 1949. The United States signed those international treaties, becoming a party to them, and such international agreements must not be in conflict with the laws of our land.

As amnesty is being discussed now, however, those persons who chose illegal forms of resistance to national military policies have been forced to assume an unfair responsibility for a war which is emerging as the most unpopular conflict in our country's history. Resisters are being made the scapegoats for the disturbance and discontent that the war created in American society.

But do we not all share responsibility for this war? How many Americans paid taxes to support an inflated Defense Department budget that subsidized our military involvements in Southeast Asia? How many American political leaders consented to the recommendations of miiltary experts during the era of the Indochina war?

To suggest conditional amnesty only perpetuates discrimination against those persons who chose to act out their opposition to the war openly. An argument for conditional amnesty overlooks the fact that many young Americans faced no alternative but illegal resistance to the war, while hundreds of thousands of young men favored by fate found ways to circumvent personal involvement in the Indochina War by legal but arbitrarily available avenues. These options, such as school and job deferments, were forms of non-cooperation acknowledged by every member of Congress who voted to support the Selective Service System. This kind of non-cooperation was also endorsed by the sentiments of a large sector of the American public. Unfortunately, local draft boards varied tremendously in their interpertation and application of provisions of the system.

Even more clearly, conditional amnesty violates the meaning of the word amnesty itself: forgetting. The mechanics of a conditional amnesty require some form of review boards: which would seem administratively impossible, given the large numbers of people who are in need of amnesty. Furthermore, review boards would only serve to reinstitute the same discriminatory and judgmental decision-making process against which citizens concerned with civil rights voiced their opposition during the draft period.

Undoubtedly, some persons whose conduct has been morally questionable would benefit from a universal and unconditional amnesty: both those who performed violent acts of opposition to American military policies as well as those who carried out violent acts of war against human life by their participation in those military policies would be amnestied. We recognize that there will be injustices in granting amnesty in any form; however, we feel that the injustices that will result from a universal and unconditional amnesty will be less than would result from the inclusion of any conditions.

Our stance places us in opposition to all legislation that has thus far been introduced to deal with the need for an amnesty. We cannot support any legislation that does not encompass universal amnesty; we cannot support any legislation that perpetuates the vindictiveness of conditional requirements in granting an amnesty; we cannot support any legislation that requires the implementation of review boards that allow the opportunity for discriminatory judgements of individual war-related activities.

We are dismayed by the reluctance of the American Government to undertake more positive steps to respond to this pressing need for reunification of the American people. American "democracy" in the 1970's stands in sharp contrast to the compassion displayed by our nation following earlier wars as well as to the policies that have been undertaken by other nations. For example, several European nations granted amnesties to persons engaged in the "compromising activities" after World War II. Japan granted a sweeping amnesty to 1,300,000 of its citizenry following World War II.

It is in this spirit of regeneration that we request the Congress of the United States to enact legislation to allow for universal and unconditional amnesty. To resolve all the specific details of such an amnesty will, undoubtedly, be a difficult task, but one which is essential to resort stability to the lives of hundreds of thousands of Americans who would benefit from such Congressional actions.

An amnesty must be universal, for which American among us is really free of the need for some form of amnesty regarding the Indochina War?

An amnesty must be unconditional, for to sit in judgment of the correctness of any American's response to the Indochina War is to perpetuate the discrimination which so characterized this controversial war.

An amnesty must be sweeping, for neither Congress nor the President made a formal Declaration of War, so it is difficult to decide how far back in time an amnesty should extend. We suggest an amnesty granted now should apply to all living Americans. That would include those persons from the Korean War and World War II who were never extended such an act of forgetting.

If Congress is hesitant to undertake positive steps toward the granting of an amnesty because of uncertainty about what the American public feels about this issue or because you cannot resolve the specific details of an amnesty, I would strongly suggest that members of this committee, and others as well, conduct public hearings within your home districts to hear from your voting constituency. Failure to employ the democratic process of local public hearings does not justify Congresspersons remaining in Washington to rationalize inaction on this issue.

Thank you for allowing me the opportunity to appear before this committee today.

Wisconsin Amnesty Project

STATEMENT OF PURPOSE

The Wisconsin Amnesty Project is committed to working for universal and unconditional amnesty for all persons suffering disabilities because of opposition to United States involvement in the War in Southeast Asia, to the draft, and to the military.

Immediate amnesty without conditions (such as alternative service) and without case-by-case review would include:

All military resisters (including "deserters") and draft resisters, whether in exile or underground in the U.S.;

All persons who, because of their opposition to the war and the military, have been administratively punished, convicted by civilian or military courts, or are subject to prosecution; and

All veterans with less-than-honorable discharges.

The purpose of the Wisconsin Amnesty Project is to educate the people of Wisconsin about the need for amnesty and to mobilize them to work for a universal and unconditional amnesty.

WHAT IS AMNESTY?

Legally, amnesty differs from pardon in that pardon implies guilt while amnesty does not. According to the U.S. Supreme Court (in the post-Civil War period), "Amnesty is the abolition and forgetfulness of the offense; pardon implies forgiveness." Also a pardon usually applies only to a specific individual while amnesty applies to an entire class of people. However, there is a tendency at present to regard amnesty as an act of forgiveness.

Conditional amnesty.—This is a measure which removes the legal penalties for resistance on condition that the resister perform alternative service.

General or universal amnesty.—This is an amnesty which includes deserters as well as people who violated the selective service laws as civilians.

Historical note: Amnesty has a long history in Western tradition—the first *recorded* amnesty was proclaimed in 404 BC by Thrasybulus of Athens. Roman law, upon which much of our law is based, contained the concept of *restitutio in interrum* (loosely, "restoring the whole"). While many peace treaties contain amnesty clauses, either explicity or implicitly, the treaties after World War I and World War II did not. However, France, Germany, and Japan have declared amnesties for persons engaged in "compromising activities" during World War II; in the case of Japan this included some 1,300,000 persons.

HOW MANY ARE ELIGIBLE FOR AMNESTY?

President Nixon has spoken of "these few hundred who chose to desert their country . . ."

The Pentagon reports that between July 1966 and July 1972 there were more than 420,000 deserters, of whom at least 32,000 are still at large.

Estimates of the number of exiles in Canada range from 20,000 to 50,000 or more.

About 10,000 men are in jail or under indictment for refusing or evading military service.

Toward the end of the massive American ground combat presence in Indochina, the FBI estimated that about two-thirds of the 36,000 men and women it picked up each year were wanted in connection with avoiding military service.

About 40 percent of the young men ordered to report for induction into the Army initially failed to comply.

It is not possible to estimate the number of draft delinquents who have never been indicted due to court overload, much less the number of men who have never registered for the draft.

The rate of desertion from the Army in 1971 was 73 per thousand, the highest in this century.

Between 300,000 and 560,000 servicemen have received less-than-honorable discharges, resulting in the loss of veterans' benefits, as a result of opposing the Vietnam war.

The draft in American history

Karl Hess and Tom Reeves, in *The End of the Draft*, offer this definition of conscription: "Conscription is confiscation. It is the process wherein the established authority of a nation-state confiscates not the material property but the very lives of its citizens. Its purpose is to defend that established authority and the process it represents."

Many of our ancestors came to America to escape European military conscription, unwilling to be pawns of the militarists. During most of our history, conscription was considered alien to American principles of fredom.

George Washington proposed compulsory militia but was rejected by the emergency national leadership. During the War of 1812, Congress opposed drafting men from the militia into the regular army. Daniel Webster was the leading opponent, asking, "Is this, Sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of a free government? No, Sir, indeed it is not . . ."

During the Civil War, the first American draft law was adopted. Men were drafted from those communities which failed to produce a predetermined quota by voluntary means. Men could hire a substitute or pay the government $300 to prevent being drafted. Two percent of the army was made up of draftees. Draft riots occurred in New York, Boston, Rutland, Vermont, Portsmouth, New Hampshire, and Wooster, Ohio. The draft ended in 1864 and no further conscription law was adopted until World War I.

In World War I conscription met extensive discussion and significant Congressional opposition. Congressman John Nicholls from North Carolina stated, "In my state they have a feeling that a conscript is a slave. And I want to ask you this question: Would this not be a great government to go to Germany and free slaves with an army of slaves?"

The Selective Service Law was adopted on May 18, 1917. Conscientious objectors were exempted from combat only if they were members of a well-recognized sect whose principles forbade its members to engage in war. Of those called in the first draft, 50.62% put in claims for exemption. More than a quarter million or eight percent failed to appear at all and succeeded in escaping arrest. Thousands failed to appear to register and thousands more refused to appear when called. So many men left the country to escape the draft that an order was issued prohibiting this. So many had their teeth extracted in order to disqualify physically for the draft that the War Department issued a warning to dentists that they were liable to prosecution for aiding draft evasion. Conscription ended with the war.

In 1940 the United States adopted a selective conscription law under which conscientious objectors were exempted and allowed to do civilian work of national importance, provided their objection was by virtue of religious training and belief. Opposition was very strong in the U.S. since conscription was seen by many as leading to America's entry into the war. The 1940 law was adopted for one year only.

On August 18, 1941, the Selective Service Extension Act was adopted in the House by a one-vote margin 203–202. Fifteen thousand men went to jail during World War II for selective service violations.

The law expired in March, 1947 but was reinstated in June, 1948. Attempts to terminate the law have failed. The law remains intact at present except for one section which expired last June, that which gives the President the authority to induct.

Vietnam and the draft

The peacetime draft allowed the war to be escalated without the consent of Congress. Unlimited supply of manpower meant more war power.

During Vietnam draftees made up 11 percent of the Army; 25 percent of combat troops in Vietnam; and nearly half the combat deaths.

The draft discriminated against the poor, minorities, and the uneducated. Only seven percent of those eligible were ever called to active duty. We were a nation of draft dodgers—legally deferred. Those with money and position could receive medical deferments from sympathetic doctors. "Legal" dodges were widespread and blatant. Joe Namath wes exempt because of a "trick knee" and actor George

Hamilton was exempt because he was the "sole support of his mother." Millions of young men escaped through educational deferments not available to poorer youths.

Conscientious objection was not an alternative for a great many registers. A CO must be opposed to all wars, not just the Indochina War. Up until 1970 one had to be part of an orthodox or traditional religion. The case of Welsh vs. U.S. determined this was not essential—too late for thousands of war resisters. Many would-be CO's were turned down by draft boards which identified patriotism with carrying a gun. One applicant was told by his draft board, "We've never granted a CO since we've been in operation and we're not going to start with you." Draft counselors report that such arbitrary and capricious judgments were in fact very common.

Soon dissent against the Selective Service System moved to resistance. David Miller was the first person prosecuted for draft card burning. In 1965 Congress prosecuted at first but stopped when draft card burning became commonplace. More and more young men, when called up for induction, refused to take the symbolic step; in some localities only a fraction of those drafted reported for induction. The number of young men who upon becoming 18 deliberately failed to register for the draft is unknown and adds a large uncertainty to estimates of the number of people eligible for amnesty.

No draft can be fair—a fact admitted to by General Hershey when he was Selective Service Director. A discussion of amnesty for Selective Service violators cannot be fair without a thorough study of the Selective Service System and its inequities.

Mr. KASTENMEIER. Our next witness is Mr. Polling on behalf of the Church of the Brethren.

TESTIMONY OF JAMES N. POLING ON BEHALF OF THE CHURCH OF THE BRETHREN GENERAL BOARD, ACCOMPANIED BY RALPH E. SMETZER, CHURCH OF THE BRETHREN, AND WARREN HOOVER, CHURCH OF THE BRETHREN

Mr. POLING. Thank you, Mr. Chairman. I am joined by two of my colleagues who are only here to help, if necessary, Mr. Ralph Smetzer, who works for the Church of the Brethren, and Mr. Warren Hoover, who is also a member of the Church of the Brethren.

I hope that you have copies of my testimony and I would like to summarize the testimony and answer any questions, if you have any.

Mr. KASTENMEIER. Your testimony is quite brief. If you care to give it in its entirety, it will be quite acceptable.

Mr. POLING. Thank you, I will read certain paragraphs here, which I do think catch the meaning of the paper.

My name is James Poling from Thomasville, Pa. I am the pastor of the West York Church of the Brethren, which is a small church with about 86 members.

Today I have been invited by my denomination, the Church of the Brethren and its general board to represent the roughly 1,000 congregations that this board represents across the country.

The Church of the Brethren in its 1973 annual conference last June voted support for a full and unconditional amnesty for all our citizens suffering alienation and disadvantage because of acts of conscience related to participation in the war.

Our complete conference statement is attached and is a part of our testimony.

I might add at this point also that the delegated body of our church is predominantly laymen and not clergy and that the vote was nearly 90 percent in favor of the statement that is presented to you today.

The first section on amnesty for our members, we have had a number of members who have refused to cooperate with the Selective Service System and who have been convicted as felons. These and others who have said no to military service in other ways have had the strong and the official of our denomination and such position of our church does go back to our founding over 250 years ago.

It is for these members particularly that we appeal to you for a total and unconditional amnesty. But our concern is not only or even especially for our own members.

As we have struggled with the war in Southeast Asia, we have become aware of many others who have strong and sincere convictions about war although perhaps coming to their positions from quite different backgrounds than ours. We have learned to have a deep and abiding respect for their conscience and the belief. And we believe that our Nation is stronger for their contribution as citizens.

And so for these persons especially we appeal to you for total and unconditional amnesty.

As we understand amnesty—and I would say at this point I am not a lawyer or historian—as we understand amnesty, it is a legal provision for restoring the rights of a group of persons without necessarily resolving the issue which caused the alienation or without placing blame or declaring total innocence. It is a legal approach, which is appropriate when reconciliation of persons and groups is a preferable political and moral alternative to continued conflict and retribution.

Therefore, in order that many persons might have their full opportunities as citizens restored and in order that our Nation might move toward unity and reconciliation in these troubled times, we urge you to authorize legislation that gives a full and unconditional amnesty to all who are alienated from our Nation because of war.

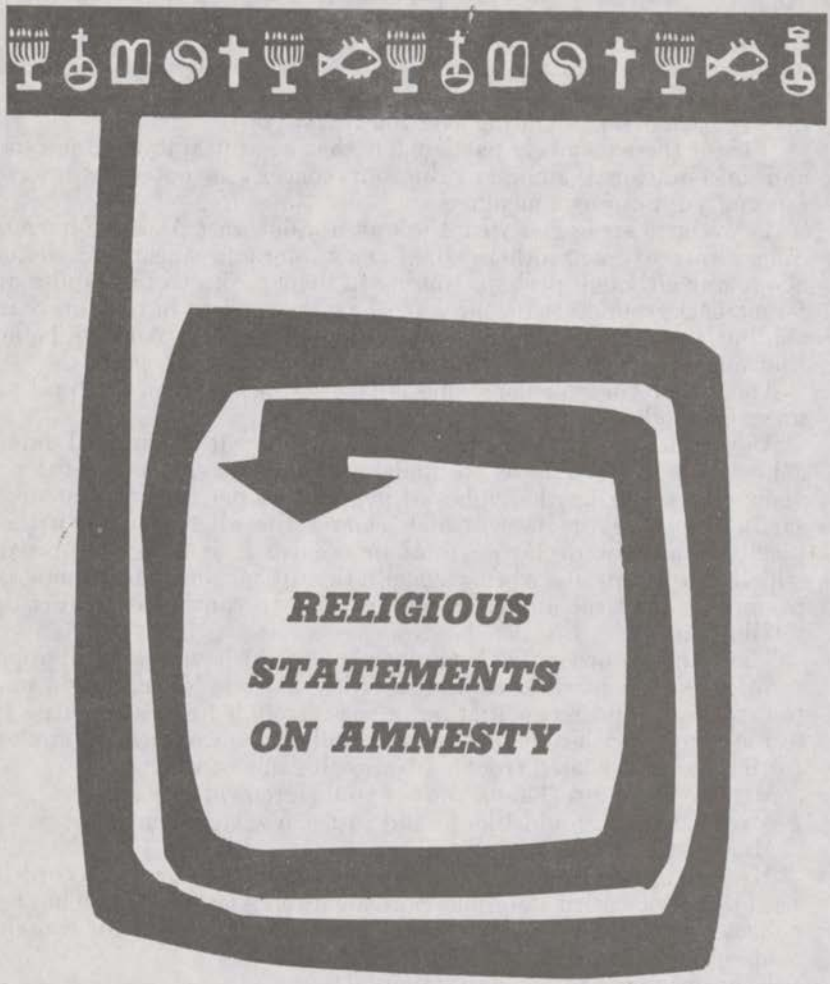
Mr. KASTENMEIER. Thank you for your statement.

Mr. POLING. I would like to add just a few statements, if possible.

Mr. KASTENMEIER. Yes, all right.

Mr. POLING. I think I have already submitted for the record has been this book called Religious Statements on Amnesty which has been collected by the National Inter-Religious Service Board for conscientious objectors.

[The document referred to follows:]


RELIGIOUS
STATEMENTS
ON AMNESTY

INTRODUCTION

The National Interreligious Service Board for Conscientious Objectors is pleased to present this compilation of official religious statements on amnesty. To the best of our knowledge, all recent amnesty statements by national religious groups are included.

Nearly all of these statements call for some form of unconditional amnesty. The reader will find expressions which vary in scope and intensity, such as: "calling for an act of reconciliation" or "supporting men of good conscience" or "calling both the President and the Congress to act" as well as some excellent suggestions for religious groups on "providing a supportive community for all persons".

The spirit of reconciliation pervades these statements. They also reflect a growing uneasiness with some of our nation's emphases in the recent past and an indication that religious communities are intent on looking to the future and grappling with the present.

Our hope, in providing this compilation, is that people everywhere might better understand the motivations of war objectors and resisters, the needs of stigmatized veterans and the significance of amnesty.

This booklet is part of a larger collection of information provided by NISBCO's Amnesty Information Service and is included in the NISBCO Amnesty Education Packet. Prices for single copies of this booklet - $.35 (prepaid) and for the Packet - $1 (prepaid). Contact NISBCO for special rates on bulk orders. (see back of booklet for address)

Warren W. Hoover
Executive Director

James E. Tomlonson
Editor

January 1974

TABLE OF CONTENTS

American Baptist - 1969 1
American Ethical Union - 1972 1
American Friends Service Committee - 1973 2

Christian Church (Disciples of Christ) - 1973 4
Christian Reformed Church - 1973 6
Church of the Brethren - 1973 7
Clergy and Laity Concerned - 1973 9

Ecumenical Witness - 1972 10
Episcopal (House of Bishops) - 1973 10

Fellowship of Reconciliation - 1973 11
Friends Committee on National Legislation - 1972 12

Interreligious Conference on Amnesty - 1972 12

Jewish
American Jewish Congress - 1972 14
National Federation of Temple Sisterhoods - 1973 15
Union of Hebrew Congregations - 1973 15

Lutheran
Lutheran Council in the U. S. A. - 1972 16

Mennonite
Old Mennonite Church and the Peace Section of the Mennonite Central Committee - 1973 17

National Council of Churches of Christ in U. S. A. - 1972 .. 19
National Interreligious Service Board for Conscientious Objectors - 1972 22

Roman Catholic
National Conference of Catholic Bishops - 1972 22
Conference of Major Superiors of Men U. S. A. - 1973 24

Southern Christian Leadership Conference - 1973 25

Unitarian Universalist Association - 1973 26
United Church of Christ - 1971 27
United Methodist Church - 1972 27
United Presbyterian Church in the U. S. A. - 1973 29

RELIGIOUS STATEMENTS ON AMNESTY

AMERICAN BAPTIST

Amnesty

Just as we respect the convictions of those young men who have felt that it was their duty to comply with the draft laws of our country by entering military service, so we also respect those young men who, during recent years, have resisted the draft because of their sincere conviction that participation in the Vietnamese war would constitute a violation of their consciences. We deeply sympathize with the families of those young men who have died in the performance of their military duties and we sympathize with those young men and their families who have become alienated from their government through their protest against the war. We honor those men who have sacrificed their future by death on the battlefield and we respect those who have risked their future by conscientious acts of non-conformity. Therefore, consistent with our concept of freedom and conscience, and recognizing that many of our ancestors came to this country to avoid conscription in Europe, we call upon the President of the U.S. to grant amnesty upon the cessation of hostilities or upon major reduction of American forces for all persons who are either in jail or outside the country due to their acts of conscience against the war in Vietnam and the Selective Service System.

American Baptist General Convention, "Resolution on Conscience, Freedom, and Responsibility", 1969.

AMERICAN ETHICAL UNION

Amnesty

Whereas, a great number of our best young people suffer imprisonment or exile, following their strong convictions to refuse to serve in an immoral war waged by the United States in Southeast Asia; and

Whereas, it is widely recognized by the people of the United States that this war was a mistake; and

Whereas, we admire and respect those young people who refuse to submit.

Therefore, be it resolved, that the American Ethical Union petition the President of the United States to grant a full and unconditional amnesty to all those in prison, living abroad, or in hiding in their own country because of moral convictions which force them to refuse service in the armed forces.

Repatriation and Restoration to Citizenship of War Resisters Abroad

Whereas, many draft resisters now living abroad have acted out of revulsion to war which by now is widely recognized as unjust or immoral, or at least a governmental action which was a grave mistake; and

Whereas, many draft resisters abroad have not broken any law, as they have emigrated to countries with whom the United States maintains friendly relations and have renounced United States citizenship before having become obligated to service in the armed forces of the United States; and

Whereas, most resisters abroad have suffered hardships of separation from their families, lack of employment, and other difficulties;

Therefore, be it resolved, that the repatriation of those resisters abroad who have not broken any law of the United States as they have not become obligated to service in the armed forces should be facilitated by the requisite legislative or administrative action for repatriation and restoration of citizenship.

64th Annual America Ethical Union Assembly, March 7, 1972, Cleveland, Ohio.

AMERICAN FRIENDS SERVICE COMMITTEE

The people of the United States have before them the question of amnesty for those who violated civil or military law in the course of active opposition to the war in Indochina, or in the course of removing themselves from participation in or support of that war.

The American Friends Service Committee urges the United States Government to declare an amnesty for all these persons.

The American Friends Service Committee is opposed to all war and all conscription because of our religious faith. We are opposed to participation in war, preparation for war and civilian support of war. We are opposed to civil war, international war, foreign wars, wars in this country, wars of defense, wars of aggression, popular wars and unpopular wars.

Starting from that position, we identify with those for whom we are asking amnesty. We do this even while rejecting methods, such as evasion and violence, used by some. We believe in confrontation with evil, not evasion, and in nonviolent direct action against evil, not violence. These moral judgements we make for ourselves, not for others.

In one sense, those in need of amnesty are accidental victims. In fairness, they should share the good fortune of all those who missed the draft through the lottery, deferments, etc. Others have already received their "amnesty" through the dropping of many cases of military charges and of criminal charges before civilian courts.

Amnesty does not involve making case-by-case moral, political or pragmatic judgements. Amnesty is not an ex post facto stamp of approval on a class of offenses formerly seen as illegal or anti-social. A declaration of amnesty is a

political act which, like many political acts, may be inspired by a great many different motivations and judgements.

Amnesty does not mean forgiveness, nor is forgiveness being sought. Amnesty comes from a Greek word meaning forgetfulness and a French word meaning forgotten. Amnesty means forgetting a broad classification of offenses, being in a state of amnesia insofar as certain events are concerned.

After World War II, so-called amnesty was granted to only 1,500 of approximately 15,000 whose conscience had led them to break the Selective Service law. The fact that their objections were religiously based, serves to underscore the continued preferential treatment granted religious objectors. We reject this special privilege for limited kinds of objection. Although the AFSC firmly believes these men should have amnesty, we consider it inappropriate to make a special plea for these persons.

There are others with much greater need, with traditions quite different than ours, many of whom have no objection to war in general but came to have profound objections to the Indochina War. Many of these men left this country to avoid Selective Service or to separate themselves from the armed forces. Many of them would like to return. They and their families are torn by separation, financial difficulties, fear and many other problems resulting from having left the country under these circumstances. Others live in this country, some in apprehension underground, some in prison, some with prison terms completed, but carrying permanent legal disabilities as a result.

The misery in the lives of these people should not be used as a political football. Insofar as the amnesty issue is concerned, let us put behind us the controversies of the war in Indochina. Amnesty is neither a justification of the legal offenses committed, nor a judgement on the war giving rise to those offenses.

The uncontested fact is that the war in Indochina has torn the fabric of American society as no other war has done since our own Civil War, now more than 100 years behind us. Out of that war came Lincoln's great call for reconciliation, "with malice toward none."

In the spirit of such reconciliation, let us begin to heal the wounds of this war, even while we recognize that we are still a long way from peace in Indochina. As a simple act of mercy which will help thousands of persons to reclaim their rightful role as American citizens, there must be an amnesty. As one small step of many needed to get on with the building of peace, let there be an official forgetting of offenses growing out of opposition to, or personal withdrawal from, the war in Indochina.

Approved by American Friends Service Committee Board of Directors: April, 1973.

CHRISTIAN CHURCH (Disciples of Christ)

Resolution on Reconciling the Nation through a Grant of Amnesty (Abridged)

Introduction: As the Indochina war, the longest in our history, appears to be drawing to a close, the people of the United States already are involved in healing acts of assistance. To those who fought for our country, pensions, medical care, employment and educational assistance have been made available. Presidents Johnson and Nixon have proposed multi-million dollar relief and rehabilitation programs for both friend and foe among the nations of Indochina.

The people of the United States also have commenced consideration of an appropriate healing ministry to those young men who for conscientious reasons dissented with our national policy and are or may be in legal jeopardy for violation of civil or military law. Since acts of conscience are frequently inspired by a man's religious faith, it was to be expected that the religious community would assume leadership in petitioning the President and Congress for a General Amnesty for the approximately 10,000 men who have been prosecuted for draft violations, the 60,000 exiles in foreign countries and the 300,000 Vietnam Era veterans who have received less-than-honorable discharges.

A Proposal by the General Board: As a result of the Interreligious Conference on Amnesty, held in Washington, D.C., March, 1972, the General Minister and President, in cooperation with the department of church in society of the division of homeland ministries, prepared a draft report and resolution for the General Board of the Christian Church (Disciples of Christ), meeting at St. Louis, Missouri, June 1972. The General Board considered the report and the proposed resolution and then declared that it:

1. Endorses the principle of an act of Amnesty at the conclusion of the war in Indochina.

2. Urges congregations, regions and general manifestations of the church to engage in a program of education related to the moral issues of Amnesty during the year preceding action by the General Assembly in Cincinnati, Ohio, including a study of various conditions that might be proposed in connection with an act of Amnesty.

3. Requests the General Minister and President to work with appropriate units of the church so that:

a. government officials will be apprised of the views of the General Board concerning Amnesty;

b. assistance may be given congregations, regions, general units and related institutions of the church in developing a program of education concerning Amnesty;

c. an updated resolution of Amnesty will be presented to the General Assembly in 1973.

A Recommendation by the Division of Homeland Ministries (1973): The division of homeland ministries, having reviewed the pros and cons concerning pardon and amnesty, feels that a General Amnesty for all men in legal jeopardy due to violations of civil and military law is most consistent with the Gospel of Jesus Christ, the Prince of Peace, whose central message of love and reconciliation embraced all men regardless of condition. Amnesty is the "blessed act of oblivion" of which Winston Churchill speaks, it is the magnanimous gesture of Abraham Lincoln's "with malice toward none. . . .charity for all" and most important, it is the act of secure and religious people who are strong enough to perform the loving and healing acts of reconciliation which our nation and the world requires.

The division has considered the various alternatives to Amnesty and finds them either unwise or punitive. The suggestion that those guilty of violations of civil or military law perform from two to three years of national service is retributive and unrealistic. It ignores the reality of a situation wherein these men of conscience feel they already have served and suffered and that as dissenters to an immoral war it is they, not we, who should do the forgiving. It is not the purpose of the division in this statement to evaluate who has the pre-eminent role of forgiver and forgiven, but simply to recognize that a punitive gesture would be no more acceptable to men of conscience in time of peace than it was in time of war.

In the same manner, individual pardons fail as a method of achieving an act of reconciliation that is consistent with the Gospel of Jesus Christ. Individual pardons granted or denied by a Presidential Board must deal with the question of intention and sincerity of those charged. This division and all other church agencies who have counselled conscientious objectors during the war know that the evaluation of intentions and sincerity is a difficult and elusive task. Even dedicated persons laboring in the 4,000 local draft boards of this country have produced an ambiguous hodgepodge of decisions. Sincerity is in the eye of the beholder. No acceptable and objective general criteria are available. For example, the Presidential Pardon Board following World War II found itself enmeshed in the test of sincerity and in the end left its work unfinished after granting pardons to only ten percent of the 15,000 men in legal jeopardy. It is for this reason, therefore, that the division recommends a General Amnesty as the only wise, realistic and humane method of reconciling the nation so wrought by division while the war was in progress.

Therefore be it Resolved, that the General Assembly of the Christian Church (Disciples of Christ), meeting in Cincinnati, Ohio, October, 1973 approves the principle of Amnesty for conscientious dissenters to the Indochina war as consistent with the teachings of Jesus Christ and further declares that such an act is most likely to achieve our national goal of reconciling the nation and binding up its wounds once the war is concluded;

Be it Further Resolved, that the President of the United States and the Congress be urged "to declare amnesty for all persons in legal jeopardy and for acts of nonviolent resistance to civil or military law because of opposition or forced participation in the Indochina war, except those convicted of acts of violence and even here we recommend that these cases be reviewed on an individual basis."

Be it Further Resolved, that we ask the General Minister and President of the Christian Church (Disciples of Christ) to communicate this resolution to the President of the United States and relevant Congressional Committees, and urge the division of homeland ministries to develop a program of education and action to involve our congregations in an ecumenical effort to secure Amnesty.

31-658 O - 74 - 33

Approved by the General Assembly of the Christian Church (Disciples of Christ) meeting in Cincinnati, Ohio, October 1973.

CHRISTIAN REFORMED CHURCH

In facing the question of conscientious objectors, the Synod of the Christian Reformed Church in 1973 made the following decisions:

1. To urge pastors, consistories, and its church membership to fulfill their duty to extend Christian love and concern to all who have been directly or indirectly punished for resisting the Vietnam Conflict because of conscience which has been informed by Scripture.
2. To send once again our 1939 and 1963 decisions regarding the Christian attitude toward war and peace to the President and each member of Congress with the following statement:

   In 1969 we sent to you our TESTIMONY REGARDING THE CHRISTIAN'S ATTITUDE TOWARD WAR AND PEACE, a document adopted by our denomination in 1939 and reaffirmed in 1969. With that document we also sent to you decisions that were made by our denomination in 1969. Those documents still represent the position of our denomination.

Based on this position and in respect for individual conscience, in the interest of national reconciliation and in the name of Christian love and justice we urge the President of the United States and Congress to grant, at the earliest opportunity, amnesty for those who by reason of their Christian conscientious objection to the Vietnam Conflict are in exile, at large, incarcerated, or deprived of the full rights of citizenship. The request for amnesty for such men does not make a judgment on the justness or unjustness of war; it does support the man who in good conscience could not bear arms in the Vietnam Conflict. This request does not dishonor, but respects the consciences of those who fought and died.

Grounds:

a. Although synod has never declared a specific war to be just or unjust, it has consistently supported the man who could not in good conscience before God bear arms in a given war. "Both Scripture and our Confessions place a restriction upon our duty to obey the government. Peter at one time refused to obey the civil authorities and appealed to a higher loyalty to God in doing so. And our Creed restricts the duty of the citizen to the State to 'all things which are not repugnant to the Word of God.' From this it is clear that the Church must not only recognize the right of Christians but even their duty under certain definite circumstances to refuse obedience to the civil magistrate." (Acts of Synod, 1939, p. 246)

   "The only conscientious objector to military service whose claim the Church cannot repudiate is he who, recognizing his duty to obey his government and to defend his country in response to its call to arms, has intelligent and adequate grounds to be convinced that the given war to which he is summoned is an unjust war.

   When he is absolutely certain in the light of the principle of the Word of God that his country is fighting for a wrong cause, he cannot morally justify his

participation in the given war. War is killing people and for anyone to engage in such killing of fellowmen when he is convinced in his heart that the cause for which he is fighting is an unjust one, this procedure cannot be justified before the tribunal of God and His Word. The only course open to such a person is to resort to passive resistance and to refuse to bear arms in that given war.

In closing, synod would urge upon all to pray for righteousness and peace in national and international affairs; to study the revealed Word for an understanding of the will of God for the guidance of the life of citizens and their governments; to obey all lawfully constituted authorities for God's sake; and, if a serious conflict of duty should occur, to obey God rather than man." (Acts of Synod, 1939, p. 249)

b. A request to declare amnesty for conscientious objectors to the Vietnam Conflict is a concrete action which implements the words of synodical decisions especially the 1969 decision urging us to ". . . .extend Christian love and concern to all the draft eligible including those who struggle with the decision regarding selective conscientious objection and its consequences." (Acts of Synod, 1969, p. 99)

c. Such a statement also implements our responsibility as a denomination to speak the Word of God as we perceive it to those in authority over us, a responsibility clearly recognized by the 1969 Synod which sent our decisions to Washington.

Decision made by the Synod of the Christian Reformed Church in 1973.

CHURCH OF THE BRETHREN

There are thousands of persons today who have felt the effects of the *dividing wall of hostility* which has been generated by war. Social relationships in the family and between families have been damaged because persons have had different beliefs and convictions about war. Even after the war has been declared over, there remain divisions which cause suffering for persons and groups in our society.

The Church of the Brethren regards this situation with concern and sorrow not only because we believe that war is sin, but also because we understand that the gospel message can bridge the walls of hostility which exist, between exiles, families, and government.

At its root, the concept of amnesty had to do with the biblical understanding of reconciliation. How can there be reconciliation between parents and children in the United States? How can there be reconciliation between the government and exiles? How can there be reconciliation between those with different opinions on war? How can we restore the unity of our nation while maintaining integrity both for the country and its people?

We, the members of the Church of the Brethren, believe that reconciliation is most likely if the following things occur:

(1) The United States Government should grant unconditional amnesty to all those who are alienated from their nation because of their personal acts of conscience in relation to war.

(2) Christians, both individually and as denominations, should become agents of reconciliation wherever such service is needed.

In the New Testament, the theme of reconciliation is central to the understanding of God's love for persons in Jesus Christ. The gospel calls us to a ministry of reconciliation.

First, according to Ephesians 2:14ff, reconciliation is a gift of God. *For he is our peace, who has made us both one, and has broken down the dividing wall of hostility*. . . .Through God's action in Jesus Christ, there is reconciliation between people while there are differences (John 10:16; Galatians 3:28). Even though the disagreements on many issues separate people within our nation, there can be reconciliation if we accept it as God's gift.

A declaration of amnesty follows this model. Through amnesty, a government can forget the legal penalties connected with the actions of a group of persons, and thereby declare that the unity of its people is more important than continued hostility and division. Amnesty can bring reconciliation even though significant differences remain on the issues at stake, because such an action removes the punitive measures related to such differences. Reconciliation is a gift of God and he will bring peace if we trust him (Psalm 118:8-9).

Second, according to II Corinthians 5:18, the church is called to be an agent of reconciliation. *(All this is from God who through Christ reconciled us to himself and gave us the ministry of reconciliation.)* The Church of the Brethren has always taken this Scripture seriously and we have set out to be reconcilers. As Christ was the mediator between sinners and God, so the Church is called to a ministry of reconciliation between persons and God and between people in conflict with one another.

Whatever the government does about amnesty, there will be need for reconciliation. Many men have become alienated from their families and local communities and now want to be reunited. Many young people could return home now without legal difficulties, and may if they have a supportive community. Some may decide to return and face the legal penalties rather than remain as exiles. On many levels there is work of reconciliation which could be done by the Church. The Scriptures lead us to such a ministry.

Throughout its history, the Church of the Brethren has taken seriously the task of bringing persons together. During the Revolutionary War the Brethren refused to side with either army, but worked to bring peace in their communities. It was Elder John Kline in the War between the States who tirelessly rode the circuit of reconciliation to keep persons as one in faithfulness to Christ. During and following World War II, Brethren took in and aided Japanese-American refugees. The present situation presents the Brethren another opportunity to be involved in healing the wounds of war and to be faithful to the ministry of reconciliation.

The question of amnesty is being debated in the press, discussed on radio and television, and kept much alive in our nation's capital. Several amnesty bills and resolutions have been introduced since the present session of Congress began.

In any discussion of amnesty, we are talking about hundreds and thousands who have suffered some legal disability because of war. For instance, tens of thousands of these persons have come out of the military service in the Indochina War with less than honorable discharges, have been convicted of Selective Service violations or have become exiles, for conscience sake.

Therefore, we come to these conclusions on the question of amnesty:

(1) As United States citizens, we believe that reconciliation is more important for our nation than the punitive wrath of the law. We favor unconditional amnesty for all those who due to an act of conscience are alienated because of war. We recommend the officers of Annual Conference make these views known to the President and appropriate persons in Congress.

(2) As Christians we believe that our ministry of reconciliation begins now. Whatever the government does, we must begin working now to bring reconciliation between those who have become separated because of their views on war. We recommend the following action:

(a) We recommend that our members and local congregations provide a supportive community for all persons who desire reconciliation with their government, families, and/or local communities. This might involve such activities as providing a context in which persons can talk with their parents or children, providing a home for those who need a place to live while becoming reestablished in a community, helping men who choose to face a prison experience.

(b) We recommend our General Board provide program and resources to help members and local congregations be agents of reconciliation for persons alienated from their government, their families and/or their local communities. This might involve communication with and support of exiles and deserters in various parts of the world, publicity on our services, and education of local congregations.

We pray that reconciliation can become a reality and that our nation can become unified around purposes which reflect the will of God in our time.

Adopted by the Church of the Brethren Annual Conference, June 1973.

CLERGY AND LAITY CONCERNED

For all those whose opposition to the war in Indochina brought them into conflict with the laws of the Government, we ask amnesty. We call upon the Congress to enact amnesty in its legislative authority to determine what is the law. We call upon the President to declare amnesty by his executive authority.

Amnesty is not pardon. In judicial tradition, amnesty forgets or blots out the offense for the sake of reconciliation and a new beginning. Let us remember in proclaiming amnesty we affirm our tradition of defense of conscience, the duty of individuals to judge for themselves what is right in the face of conflicting duties, and the foundation of our society on higher moral law.

This war has brought no heroes but only victims. Therefore, let us not be vindictive toward one group to assuage the sufferings of others. While we are making peace with our enemies, let us be reconciled among ourselves.

We may be brought together again if redress is provided for those who had to face jail or exile for their convictions. Let all those who are convicted be set free and all those facing prosecution or who might be prosecuted be immunized from further jeopardy and all records be wiped clean. For all deserters, draft violators, and those accused of civilian acts of resistence, let there be a new beginning.

Let us amnesty also all those who, because of the war, were brought into extenuating circumstances in which they breached civilian or military regulations

or were denied the full protections of due process. For the half-million veterans who are now being punished for life by other-than-honorable discharges, let their records be corrected to make them eligible for benefits that would facilitate a more hopeful future.

Religious tradition teaches that "you should not hate your brother in your heart, but you shall reason with your neighbor, lest you hear sin because of him. You shall not take vengeance or bear any grudges against the sons of your own people. . . ."

We cannot restore to life our dead soldiers, nor undo the hurts and wounds of others. We cannot undo the devastation of the lands and people of Indochina. We can repent and work for post-war healing. An unconditional amnesty would free us for a responsible and serious effort to rebuild our divided people.

Issued by Clergy and Laity Concerned, New York, May, 1973.

THE ECUMENICAL WITNESS

The religious community of the United States, as represented by the Ecumenical Witness, aware that the War in Indochina must be brought to an immediate end, urges the implementation thereupon of a broad, general and plenary amnesty, without any qualifications or conditions, to all those men and women who have been prosecuted or will face possible prosecution by civilian or military courts for any alleged offenses arising out of the war, as well as the meeting of our social responsibility to those who might refuse amnesty, to the civilian members of the resistance, and to those who have served in the military. We urge this amnesty in order to overcome the paralyzing divisiveness of the War on our society and in order to mitigate as far as possible the tragic consequences of the War upon that generation that has been called upon to bear the heaviest existential burden of this war.

We believe that amnesty will be one step toward the reconciliation of the society, but we do not believe that amnesty itself will constitute atonement of the society's responsibility for the War nor will it be in the nature of forgiveness for any offenses, but rather an effort to give ourselves the benefit of moral courage and idealism to the men and women of the young generation. We call upon the religious community further to cooperate with other groups in the society by pursuing this objective and to implement this commitment by appropriate educational and other supportive action within their own constituencies.

An Ecumenical Witness, January 13-16, 1972, Kansas City, Missouri.

EPISCOPAL CHURCH – House of Bishops

Whereas, American society must proceed to heal the wounds at home and abroad caused by the War in Indochina and to reconcile all people in peace; and

Whereas, the national disunity brought about by the War in Indochina has

caused some in this nation to scorn the conscientious acts of those who resisted the call to bear arms, and others to belittle the sacrifice of those who accepted the call of military service; and

Whereas, as Christians we are called to work for reconciliation among all people; now, therefore be it

Resolved, the House of Deputies concurring, this 64th General Convention of the Episcopal Church calls upon the people of the Church to work to insure that the government of the United States grant to Vietnam veterans every benefit that it has given to veterans of past wars; and be it further

Resolved, the House of Deputies concurring that general amnesty be granted to all who have refused to participate in the conflict in Indochina; and be it further

Resolved, the House of Deputies concurring that this Convention calls upon dioceses and parishes of this Church to include in their Christian education and social concerns programs a serious consideration of the question of amnesty and the needs of returning veterans.

Resolution Passed by The House of Bishops of the Protestant Episcopal Church of the United States in Louisville, Kentucky September 29th thru October 11, 1973. (This Resolution failed to pass the House of Deputies.)

FELLOWSHIP OF RECONCILIATION

Whereas there are many thousands of Americans in this country or overseas who have resisted the war effort or otherwise refused participation in the draft or military service in the war in Indochina, or in earlier wars, or who have engaged in other acts of resistance to war, and have therefore been convicted of or are subject to prosecution for offenses against the government; and

Whereas their offense is political, not involving violence against persons, and is unlikely to be repeated because it relates to a war that is past; and

Whereas many of these persons are on principle opposed to violence and will encourage respect for both persons and for nonviolent processes of change; and

Whereas it is desirable to heal the divisions of war and end the alienation of citizens from their government;

Therefore, be it resolved that those who face or have suffered criminal or administrative penalties for acts of evasion or of resistance to the draft or military service or war, involving violations of laws and regulations, including the Selective Service Law and the Uniform Code of Military Justice, prior to the actual ending of the war in Vietnam should be granted a full, broad and unconditional amnesty.

Executive Committee of the Fellowship of Reconcilation, February 12, 1973, Nyack, New York.

FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Friends have long realized the wounds of war are sustained by both combatants and non-combatants. A nation suffers because of the moral burden warfare thrusts on the individual and his conscience. The moral and religious dilemmas posed by war and conscription result in an additional casualty list.

The war in Indochina is increasingly recognized by Americans as immoral, illegal and unjust, carried on in violation of the United Nations Charter and the United States Constitution. Our first priority remains to stop the killing in Indochina.

The Nuremberg principles, supported by the United States, the USSR, France and Great Britian and subsequently approved by the United Nations, emphasize that final responsibility for participation in morally reprehensible acts against humanity rests with the individual.

We believe most persons who have refused to participate in military service or have opposed conscription during the course of the war in Indochina have done so on the ground that they were conscientiously opposed to the war or wartime military service. However, proof of conscience is inherently difficult, and experience has proved that efforts to judge conscientiousness have been marked all too often by refusals to recognize sincere beliefs. We therefore urge that all persons who have refused military service or conscription should not be punished for such refusal, whether it took place before, during, or after military service.

We urge the President and Congress, in a spirit of reconciliation, to join in a full and unconditional amnesty for those who are deemed to have violated U.S. laws in this regard. Thus, the government should: (1) permit the return of those now outside the United States, either to stay or to visit; (2) provide for prompt release of all currently held in civilian or military prisons; (3) drop pending and potential prosecutions; and (4) restore civil rights to all who have completed prison terms or otherwise lost such rights due to their opposition to the war.

General Committee of the Friends Committee on National Legislation, February 21, 1972, Washington, DC.

INTERRELIGIOUS CONFERENCE ON AMNESTY

Amnesty: A Statement to the Religious Community of America

Passover is the time when Jews remember the mercy of God, who brought his people out of bondage, and who ever since then has upheld, forgiven and restored them countless times. Holy Week is the time when Christians remember that Jesus wept over Jerusalem saying, "Would that even now you knew the things that make for peace."

We have met here in Washington to discuss how as Americans we can make peace one with another once this terrible war is over.

Since President Nixon took office, three million Indochinese have been killed, maimed, or rendered homeless. Since the war began over 55,000 Americans have been killed, 350,000 have been wounded, over 75,000 are in exile, over 350,000

have deserted from the military, more than 10,000 have been prosecuted for draft violations, and over 300,000 Vietnam era veterans have less than honorable discharges. Social reforms are still being set aside because of the demands of the war machine. Spiritual dislocations, though harder to articulate, are deeply felt by all. Clearly, then, there can be no honest peace among us until we finally and totally end all involvement, military and financial, in the Indochinese war.

We call once again upon the Administration to withdraw immediately all troops from Indochina, including all air and naval forces; to end conscription as a method of raising a military force; and to make America's wealth available for the rebuilding of the nations of Indochina.

At home we need to meet our obligations to the men who have fought the war, to those who were killed, and to the Vietnam era veterans. The families of those killed, especially the children, deserve every assistance that a compassionate society can provide. The veteran similarly requires our help. One quarter of the 5.3 million veterans of the Vietnam era do not have a high school education. Of these, only 12 per cent have used the GI Bill for any purpose. The unemployment rate for black veterans in the eighteen through twenty-four age bracket is 21 per cent. At least 60,000 Vietnam era veterans are addicted to heroin. Many others report spiritual and emotional crises because of their war time experience. The GI Bill for education has the lowest benefits in history. Many employers ignore and actually discriminate against the veteran. Few educational institutions manifest significant interest in the veteran. Governmental and private remedies lack the imagination and funding necessary to respond to the addicted veteran.

Finally, it is not too early to give thought to what must happen when the war ends. Various kinds of amnesties are presently being proposed by both opponents and supporters of the war, because both recognize that the war has caused a crisis of conscience perhaps unparalleled in this nation's history. We believe that genuine reconciliation demands that a general amnesty be granted to all who are in legal jeopardy because of the war in Southeast Asia. The only exception we countenance is for those who have been convicted of violence against persons; and even these should have their cases reviewed individually.

Such a general amnesty would include:

(a) draft resisters and deserters who have exiled themselves to other countries or who surrendered their citizenship;

(b) those currently in prison or military stockades, those on probation, those who have already served their sentences, and those who face or are subject to prosecution for draft or military law violations;

(c) draft resisters and deserters who have gone underground to avoid prosecution;

(d) Vietnam era veterans with less than honorable discharges;

(e) those who have committed or are being prosecuted for civilian acts of resistance to the war.

In support of such a broad and unconditional amnesty certain considerations appear to us as crucial.

God alone knows what finally determines the actions of men, and all of us know that few of us do anything for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who served in the military. Nor do we feel, as do some, that draft evaders and deserters deserve different treatment. We

feel that no one should be penalized simply because his eyes were opened after entering the military service. The essential difference between the draft evader and the deserter is only a matter of timing.

As things of God cannot be rendered to Caesar, no one can surrender his conscience to the state. For centuries religious bodies have affirmed an individual's moral right to refuse participation in a particular war in which the claims of his government and those of his conscience conflict. Yet despite insistent pleadings, Congress has steadfastly refused to provide for "Selective Conscientious Objection." This failure has been a major reason for the moral crisis of tens of thousands who saw themselves with no choice but exile or prison. Amnesty would be a belated recognition of a right they should never have been denied.

Often, the Armed Forces uses the less than honorable discharge as a means of getting rid of those they consider "undesirable." These too, are victims of the war and should not be scarred for life.

In summary, we see amnesty, not as a matter of forgiveness, but as a "blessed act of oblivion," the law's own way of undoing what the law itself has done.

Amnesty would demonstrate that America is still capable of a communal moral act. It would be bitterly ironic were we to make peace with the peoples of China and Southeast Asia but persist in vindictiveness toward those of the young generation who refused to share in the brutalities of the war.

By seeking amnesty we do not dishonor the consciences or the acts of those who fought and died. Our hope is that by abstaining from all punitive acts, against those who prosecuted this war and against those who refused to participate in it, we shall affirm a spirit of humanity that will stand the nation in good stead as it makes peace with itself and with the world.

Interreligious Conference on Amnesty, Passover and Holy Week 1972, Washington, D.C.

JEWISH

AMERICAN JEWISH CONGRESS

One of the most grievous wounds inflicted on the United States by the Vietnam War is the deep division it has caused among Americans. Thousands of young Americans have resisted serving in the Armed Forces, and countless others are living outside of their country because conscience does not permit them to serve in an armed conflict which they believe to be wrong.

The nation is giving increased attention to binding up the wounds caused in our society by the Vietnam War. Historically, this has been done by the granting of amnesty.

We urge that, in accordance with this historical tradition, amnesty be extended at the end of hostilities to all those who were compelled by their conscience to refuse to participate in the Vietnam War.

Biennial Convention of the American Jewish Congress, May 10-14, 1972, Cleveland, Ohio.

NATIONAL FEDERATION OF TEMPLE SISTERHOODS

The National Federation of Temple Sisterhoods expresses its most fervent hope that the Cease-fire Accord of the Vietnam War, signed in Paris on Saturday, January 27, 1973, will ripen into a just and lasting peace. May it yet provide a needed opportunity to reconcile the deep domestic divisions which for too many years have embittered our society.

Mindful of the Jewish religious precept to temper justice with mercy, a major effort to effect this healing process in the United States is for the President or Congress of the United States to grant unconditional amnesty to those young men who found, early or late, that they could not participate in the Vietnam War, and so either went to prison, resisted or deserted. As we make peace with our enemies, let us also make peace with the youth of America, whether or not in conscience they served in the Armed Forces or took another path. Among the latter were religious pacifists who hold war itself in abhorrence; others objected only slightly in advance of the majority of their compatriots to this particular war. Some of them were fortified in their resistance to serving in the Armed Forces during the Vietnam Conflict by the distinction Judaism makes between a "just" war and an "unjust" war or by the imperative to refrain from participating in a war regarded by the individual as immoral. Neither all who served nor those who chose alternative paths were necessarily motivated by the highest of moral values. Nevertheless, since any but a total amnesty poses great delays and almost insurmountable obstacles to the achievement of justice, we call upon the President or Congress of the United States to grant unconditional amnesty as an act both of reconciliation and compassion that can speedily help to reunite the people of the United States for the key tasks of justice, reconstruction and development which lie ahead both in this and other countries.

Resolution adopted November, 1973 by the 60th Anniversary Biennial Convention of the National Federation of Temple Sisterhoods in New York City. (The substance of this Resolution is based on one submitted to and approved by the Commission on Social Action for Reform Judaism of which NFTS is a member.)

UNION OF AMERICAN HEBREW CONGREGATIONS

We are deeply gratified by the cease-fire accord presently in force in Vietnam. It has brought cessation to a war we have long opposed and for which we saw neither moral nor legal sanction.

We express our most reverent hope that this cease-fire will ripen into an abiding and lasting peace, and that it will provide the needed opportunity to reconcile the deep domestic divisions which so embitter our society. It is time now to "bind up the wounds of the nation."

Based on the Jewish religious concern to reconcile generation to generation, person to person and in consonance with the prophetic cry of Malachi: to turn the hearts of the parents to the children and the hearts of the children to the parents, it is our considered judgment that the first way to affect this healing process is by Congress granting unconditional amnesty to those young men who found, early or late, that they could not participate in that war and so went to prison, resisted or deserted, As we make peace with our enemies, let us also make peace with these, our youth.

With full respect for those who chose to serve and those who sacrificed so much for their country, we call upon Congress to grant unconditional amnesty as an act of reconciliation and compassion that can help speedily to reunite the American people for the key task of justice and peace which lie ahead.

Resolution passed by the Union of American Hebrew Congregations at the 52nd Biennial General Assembly, during November, 1973.

LUTHERAN

THE AMERICAN LUTHERAN CHURCH

Amnesty in Perspective

1. Current discussion about amnesty. The current interest and concern regarding amnesty in this nation has been occasioned by American involvement in the undeclared Vietnam War, the longest war in our history. Thousands of young American men have been convicted or have gone into exile abroad for actions of conscience related to this war. They include (1) those who are selective (particular war) objectors; (2) in-service objectors; (3) objectors to the draft system; (4) draft registrants subjected to punitive reclassification due to protest activities; (5) military deserters; (6) exiles who face criminal indictments should they return to this country; (7) those who have been or can still be prosecuted for alleged war crimes; (8) draft violators who have served sentences but still bear the stigma of criminal activity; and (9) those less-than-honorably discharged from the armed forces.

2. What is amnesty? Amnesty is a legal term which refers, in the law of war, to a setting aside of an indictment for offenses connected with war. It is an act of government that grants remission of punishment for past high political offenses such as treason and is usually in behalf of certain classes or groups of persons who are subject to trial but have not yet been convicted. The word amnesty is derived from a Greek word meaning to forget. In effect, amnesty overlooks past political offenses against a government and erases them from memory. Amnesty has been called a "blessed act of oblivion."

3. Pardon and amnesty. The power to pardon has been legally held to include the power to grant amnesty by proclamation. Pardon is governmental forgiveness for an individual offense; amnesty is the decision not to punish for the offense. The United States Supreme Court has said: "Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness." (Knott vs. U.S., 95 U.S. 149)

4. A historical view of amnesty. The power to grant amnesty on federal issues in this country lies historically within the discretion of the president. The Constitution of the United States, Article II, Section 2, confers upon the president the "power to grant reprieves and pardons for offenses against the United States. . . ." The word amnesty does not appear in that document. Presidential proclamations of amnesty have been made in American history, for example, by Presidents Washington, Adams, Madison, Lincoln, Andrew Johnson, Theodore Roosevelt, and Truman.

American citizens have the right to appeal for amnesty, although amnesty is not a legal right. Regardless of one's views concerning amnesty in relation to the law of war, it is important to understand that no general amnesties have been granted in the United States in the twentieth century. After World War II, a President's Amnesty Board was established. It actually operated as a pardon board, considering offenses on a case-by-case basis.

5. Questions concerning amnesty and related issues. The current national discussions concerning amnesty indicate that heavy pressure will be brought for the granting of something like that amnesty historically granted by past American presidents, perhaps with certain conditions, when the Indochina War ends. Continuing questions concerning amnesty and related issues include: Why or why not? For whom? How much?

Some citizens argue that our government's participation in the Vietnam War has been unjust and immoral. This viewpoint maintains that the federal government has been wrong and therefore it should be asking forgiveness from those who refused to follow national policy concerning this war. Those holding this view state that amnesty must not be equated with forgiveness. They do not want the nation to forget the conscientious acts of potential amnesty recipients — except in the limited legal sense of forgetting to indict for such offenses.

6. The range of viewpoints regarding amnesty. The alternatives under discussion range from unconditional amnesty through amnesty with conditions (such as two to three years of alternate civilian service) to no amnesty at all. In timing, the proposals range from amnesty now, through sometime after the end of the war or the end of the military draft, to never.

Americans who now think the Vietnam War has been a serious blunder tend to advocate broad amnesty, including remission of criminal penalties and elimination of criminal status for all those whose criminal acts were committed because of their reaction to the war. Americans who believe that our national policy in the Vietnam War has been honorable tend to support narrower interpretations of amnesty or no amnesty at all for war resisters.

7. Reasons commonly advanced for granting amnesty. (Editor's Note: These reasons are listed in the complete text.)

8. Reasons commonly advanced against granting amnesty. (Editor's Note: These reasons are listed in the complete text.)

9. Amnesty and American public policy. Amnesty has been granted as a matter of public policy when pardon for political offenses has been deemed more expedient for the public welfare than prosecution and punishment. A government grants amnesty in an effort to restore good will, to recover mutual trust, to foster a sense of shared national purpose, and to reconcile divided factions among its citizens. It is reasonable to assume, in the words of Columbia University law professor Louis Lusky "that the dominant concern for amnesty is a concern for the welfare of society as a whole. . . . ."

10. Our special role as Christians. As Christian citizens, we, too, should participate in gaining a clearer perspective on the complex problem of amnesty and related issues. Our concern is focused on understanding, acceptance, and reconciliation among American citizens who disagree about the Vietnam War. As Christians, we can (1) examine our feelings and opinions about amnesty for war resisters; (2) discuss such feelings and opinions with persons who have a variety of views and experiences related to this issue; (3) study and evaluate proposed legislation on amnesty and related concerns; (4) listen to persons and groups advocating differing views on amnesty; (5) ask candidates for political office to state their views on amnesty at church or community gatherings; (6) vote our

informed convictions on the issue if and when amnesty concerns are on the ballot; (7) discuss amnesty or pardon and its relation to reconciliation in Christ in local congregations and communities. This is where social concerns take root and spread.

a. Our response in concern and action. The Lutheran Council in the U.S.A. at its annual meeting on February 29, 1972, adopted a statement entitled "Toward Reconciliation." In this statement the council offered the following four particulars for resolving divisions and furthering national healing:

(1) We call for acts of reconciliation between those who believe they served their nation by supporting this war and those who believe they served their nation by refusing to support this war.

(2) We urge loving concern for those who conscientiously participated and now return to a society which may forget their service or give it only a negative meaning. We express our approval of new initiative from both government and private agencies in job training and placement, drug rehabilitation, and other helps toward re-entry to civilian life.

(3) We urge loving concern also for those who refused to participate for reasons of conscience, including those who chose to face prosecution or to leave our land and seek refuge in another. We express our approval of new initiative from both government and private agencies to resolve the question of amnesty and to provide services, in order to facilitate re-entry into the life of our nation.

(4) We transmit this statement to the participating church bodies with the hope that they will commend it to their congregations for a response in study, prayer, acts of reconciliation, and the resolve to be caring communities. Let all seek from God the strength to accept one another, the willingness to renew relationships, the recommitment to faith in God's desire that his healing come to all men, and the trust that through God's guidance mankind may find peace and the means for its maintenance.

b. Christian realism. Christian people will need to be realistic in appraising the wisdom and statesmanship involved in dealing with the public discussions focusing on amnesty and related issues. Christians will continue to seek to achieve justice, love, peace, healing, and reconciliation among all persons, empowered by the spirit of God, the author and finisher of all that is good, in concert with all people of good will.

c. Our ministry of healing and reconciliation. Part of God's activity is to reconcile all persons to himself, to each other, and to his creation. He seeks to heal us and to enable us to become whole (Isa. 53:5; 1 Peter 2:24). This activity of God breaks down the barriers of our sinful condition — rebellion, pride, separation, division — in order that the sons and daughters of God may be restored to full participation and full citizenship in the family of God.

Jesus is our reconciliation with God (Eph. 2:14-18; Col. 1:19-20; Rom. 5:10-11; 2 Cor. 5:18-20). He joins together in himself, God and humankind. Christ has given to us the ministry of reconciliation. If Christians do not proclaim Christ's message of reconciliation to our nation at this time, who will? (Editor's Note: This statement was adopted from a longer statement — single copies may be secured by writing NISBCO.)

A statement of the Sixth General Convention of The American Lutheran Church adopted October 9, 1972, by action GC72.9.149, as a statement of comment and counsel addressed to the members of the congregations of The American Lutheran Church to aid them in their decisions and actions.

THE LUTHERAN CHURCH – MISSOURI SYNOD

The question of amnesty is being increasingly discussed as the fate of those who went into exile to Canada or Sweden, either to evade the draft or in moral or conscientious protest against the war, has become a public concern. The President of the Synod has asked us to provide a framework for reflection and discussion of the issue. While much of the discussion will be explicitly political, churches also recognize responsibilities in relation to the subject.

Our own church body may be represented by only several hundred among the more than 70,000 young men involved. Thus, direct pastoral care may not be an extensive matter. But all our members will wish to prepare themselves to face the issues intelligently. Decisions affecting the political body on one hand and the lives of tens of thousands of American families on the other, fall into the area of the church's social concern.

It is inconceivable that all members of our churches will come to agree on a single policy, nor is it likely that representatives of the various minority positions on the subject will convince all others that either a "hard" or "soft" line will be the only one compatible with a clear word of God. We do not find any simple explicit Scriptural grounding for one or another of the offered solutions. Christians will want to explore both the texts having to do with good order and government on one hand and concern for persons and especially persons-in-families on the other in order to provide a context for reflection. Such passages have more to say than do Scriptural words about exile, sanctuary, or vengeance carried over from Biblical settings when the governmental situation was not comparable to our own.

The purpose of this document is to stimulate thought and discussion, to place the topic on our churches' agenda, to seek to contribute to the creation or preservation of a climate in which Christian people can express a range of approaches which will deepen and elevate national discussion without rending the fellowship, and to invite response for the commission's own further reflection and possible dissemination of ideas.

The issue: Should young men who have chosen exile be permitted to return to the United States without suffering legal penalties now or at the end of the military involvement in Vietnam either through a simple declaration of amnesty or by re-entering American society through some form of civilian service?

We note that those who look for an act of repentance for wrongs and of repentance for wrongs and of moral judgement on the war itself usually ask for simple amnesty. Those who restrict themselves to a direct concern for the return of the exiles and restoration of their life in the United States more frequently allow for some form of civilian alternative to military service as the price of reentry.

We shall try to summarize three arguments against amnesty, accompanying each with a comment, and then will summarize three arguments for amnesty, again adducing some questions or comment.

A. Frequently cited reasons for opposing amnesty.

1. It is sometimes said that support for government, order, or rule of law in society means that Christians must join fellow citizens in seeing to it that knowing

violators or evaders of a law, whether in a spirit of self-service or conscientious witness, should remain in exile or be punished upon return. To do otherwise would be to deprive society of its basis and perhaps to deprive moral protestors of their own base for moral protest – which had been undertaken in the face of the risk or the certainty of punishment of inconvenience. What will happen to law or moral protest in future if a policy of amnesty should suggest that society can be casual?

Comment: The matter of the majesty of law and the risk-factor in moral protest has definite theological implications, though there may not be a single practical decision growing out of the recognition of these. While amnesty has overtones of forgiveness and implies some sort of man-to-man reconciliation, it should not, however, be confused with the divine forgiveness or reconcilliation which follows upon repentance. Society is not be be run on the model of a forgiving God's way of dealing with penitent man; indeed, it implies the sphere of law. This is not to say that human law can never be broken: "we ought to obey God rather than man" is a Biblical word also to this situation, and in its spirit many young men may have conscientiously acted. But the Christian calls for them to take action in light of the potential legal consequences.

2. There should be some regard, say many, for the feelings of the exiles' peers and their families, both in the cases of those who served in the military or who took alternative service or served prison terms for failing to do either. Is it equitable or judicious for a society to treat people in two different ways when they had faced a similar issue?

Comment: This issue is ambiguous, a matter of judgment and calculation concerning good harmony in society's future. It is ambiguous because so far as can be known, great numbers of those who did serve in the military and even family members of many who were injured or killed now join conscientious objectors in opposing the war on moral terms and share the views that society will overcome its present difficulties only if it recognizes those who engaged in moral protest. It is not possible to know how many of these voices there may be to balance vocal advocates of punishment for evaders and exiles, but in any case the psychological factors are too subtle to permit this to be the main base for decision.

3. Sometimes opponents of amnesty will speak in a spirit of vengeance: these young men knew what they were doing; they got what they deserved; let them remain exiles or suffer punishment here; it "serves them right."

Comment: Vengeance, however humanly natural it may be, is not a legitimate foundation for Christian inquiry, interpretation, and action, and this spirit – wherever it turns up – has to be dismissed as incongruous with Christ's way.

B. Frequently cited reasons for supporting amnesty or return on the basis of "alternative civilian service."

1. Christians are told that they above all must be custodians of the value of persons and guardians of the concord of families. If artificial separation occurs in 70,000 of our society's families or if the creative potential of countless young lives be limited as the result of prolonged exile, the exaction of penalties may be too high a price to pay for order in society.

Comment: In this case, as in the matter of the objections, this first reason cited has the most theological significance. The Christian cannot deal simply with people by category; he must penetrate the patterns of life to reach the person. "The Sabbath was made for man and not man for the Sabbath." Casual disregard for the problems or consciences or moral values of people – including dissenters – will take its toll in demoralization, disregard of the value of life, or the atrophy of

the Christian ability to care.

2. It is said that only through some sort of policy of amnesty can the larger society learn from and give some sort of endorsement to the moral protest of significant numbers of exiles. They engaged in conscientious protest against a war which significantly larger elements of society have since come to call immoral. Amnesty would be a recognition of national guilt and a means of extending gratitude to or honoring these people.

Comment: This second matter, like its counterpart above, is more ambiguous than the first. Not all exiles did engage in conscientious protest. Some acted in a positive political gesture against the government. Others, while implicitly or even stridently urging that the war was immoral, often spoke in rather casual terms about their personal act. It is difficult, in any case, to judge hearts and motives to know what was at the base of exile.

A psychological or political question further complicates this: It is inconceivable that a whole society will call its acts immoral – especially since to do so might mean condemnation of participants in the war on America's side. Since such an act is so highly unlikely, it would confuse the issue if the return of the exiles is to be connected with a formal act of national repentance or recognition of fault. It may be questioned, then, whether advocates of amnesty on these terms are not also using the exiles to further a policy. Would it not be possible and advantageous to separate the issues and find other devices for bringing the issue of the war's moral status to public attention?

3. A Christian spirit of forgiveness should lead the church to say that as God forgives man, so the Christian forgives the brother and society deals with transgressors.

Comment: As noted above, the analogy breaks down in this issue, especially since most exiles do not see themselves in need of repentance for an act they regarded as moral. The language of forgiveness in civil society can sentimentalize the concept of law. In any case, the comparison is so confusing that one almost regrets the use of the term amnesty because of its nearness to the concept of forgiveness. (Amnesty means oblivion, forgetting.)

Suggestions for action

1. Pastoral counseling. Because of the complexity and ambiguity we urge our counselors and pastors to deal with young men and their families without waiting for a change in national policy. Where possible in conscience they can serve as advocates for these exiles. Where they agree with the protest they may very well be asked to speak up for the young men. Even where the pastor does not share the exile's views or agree with his protest, he can sustain a positive relation to persons in need.

2. Congregationally and ecclesiastically. Our church and its various jurisdictions should hlep create the circumstances or climate wherein the issue can be appraised in a context of Christian acceptance, listening, and mutual upbuilding. There should not be advance judgments of the sincerity of advocates of other positions or premature resolution of theological issues. Those who take sides should be asked to support their cases by reference to the teaching of the church and not merely on the basis of personal predilections.

3. Politically and nationally. The Commission of Social Concerns reasons that no God-pleasing solution to the question of amnesty can be achieved unless all

31-658 O - 74 - 34

recognize both the seriousness with which law is to be taken and the regard with which the person in need is to be faced. Where does this leave us? What help is a "framework for inquiry and reflection" which does not come out with a clear dictum, an unambiguous claim that the Word of God commits us to a specific policy? We believe the church is better served at this stage by a statement which sorts issues, preliminarily evaluates arguments, and establishes a context in which people who disagree can do so creatively.

Out of such confrontations it may be possible that different congregations, jurisdictions, or Christian movements may come to see a clear light one way or another and begin to work for specific policies. The commission believes that the matter is best seen not as one of simple justice or injustice but rather as one of good policy. It is hard to make the case that continued exile and punishment or amnesty or alternative service can be the only just solution from the viewpoint of the Word of God and the Christian church. Either choice may be a matter of good policy, depending on whether one lets the accent fall on preservation of order and law or on restoration of family relations and assisting young people to fulfill their potential in the land of their birth. Decisions may differ, even as they can be made in serious regard for God's Word and loving concern for those who disagree.

A suggestion: Those who would like to explore the ways in which amnesty may relate to issues of "reconciliation" should read "Amnesty in Perspective," available from the Commission on Church and Society, The American Lutheran Church. (Editor's Note: An abridged copy follows this statement.)

A Statement prepared by the Commission on Social Concerns — The Lutheran Church — Missouri Synod.

MENNONITE

A Christian Declaration on Amnesty

As a major chapter in the Indochina war ends, it is important that the suffering and tragedy of the millions of war victims in Southeast Asia and North America not be forgotten. In a real sense everyone is a victim — those who promoted misguided policies as well as those who suffer from the terror of bombs and napalm and the thousands of civilians still imprisoned in South Vietnamese jails. Another group which continues to be victimized by the war, though they courageously refused to participate in it, are the thousands of fugitives from compulsory military service. It is for these persons that amnesty is needed.

I. Canada and the United States were once known by the nations of the world as lands of refuge for persons who opposed peace-time conscription or who refused to fight in wars. Among those who came for such reasons were some of our Mennonite and Brethren in Christ forebears. Many came as fugitives from compulsory military service. With the war in Indochina, this situation changed and the United States has now become a land from which men are fleeing. Canada, among other nations, has been the recipient of many of these fugitives of conscience.

Many Christians in Canada have rallied to aid those troubled, conscientious young men and their families; they have provided food, shelter and fellowship. These ministrations of mercy grew out of a deep sense of Christian obligation to help "the stranger within the gates." It was also a repayment, in many cases, for the hospitality and friendship given to those who earlier came to Canada as refugee-immigrants. We thank God for these demonstrations of love and compassion.

II. As Mennonite and Brethren in Christ Christians, we oppose all wars and believe that the refusal to participate in war is the Christian's duty. The Indochina war is no exception. Indeed this has been a particularly heinous war in the way it has been fought. It is our strong belief that Christ's message of peace and reconciliation is at the very heart of the gospel. From this perspective and with this concern we speak for amnesty, an action which we believe can help heal the wounds of the war.

Reconciliation and the restoration of civil rights can come through a general amnesty — an amnesty which will, as the word in its origin implies, forget the legal offenses because of a greater interest at hand. For us in this situation, amnesty is the law's ability to set aside its own power to indict and punish.

Many not faced with the life and death decisions of the draftee or a person in military service, see amnesty either as a generous act for youths who made a mistake or as forgiveness for those who broke the law. For Anabaptist Christians,

the view is quite different. We join with many of these young men in believing that taking a stand against the immorality of the Vietnam war needs no forgiveness. The "premature awakening of conscience" should not cause the young men who early opposed participation in this immoral war to continue to be considered criminals. Indeed are these not a part of that creative minority who have helped to change American opinion from supporting war to the recognition that it was a fundamental mistake?

III. Most Mennonite and Brethren in Christ young men have refused military service for conscientious reasons and have accepted alternate service assignments. For some from our churches, however, the decision to refuse military service also led to questioning the validity of performing alternate service. This decision was usually the result of deep struggles of conscience and a serious attempt to be a faithful Christian disciple. These Mennonite young men, perhaps numbering several dozen, are part of the larger group of potential amnesty recipients.

IV. Several hundred thousand men may be affected by a general amnesty. Some of these have never been in the military. A minority of this group chose not to cooperate with Selective Service or the military in any way. Most Mennonites who would be recipients of amnesty are in this group. A larger group of men, however, did attempt without success to gain conscientious objector classification. Despite their opposition to all war, some of these were denied conscientious objector status, often because of administrative mishandling by Selective Service. Others were not recognized as conscientious objectors because they felt participation in some wars may be right, even though they believed participation in the Vietnam war was wrong. These men accept the just war position which calls on persons to discriminate individually between just and unjust wars. Most Christian churches take this position officially; it is not recognized legally, however.

The potential recipients of amnesty who were not in the military generally find themselves in one of three situations. First, they may already be convicted of draft law violations and be in prison, on probation, or released after serving a sentence as a felon. Since 1964, 7,433 have been prosecuted and those convicted have lost some fundamental rights of citizenship. Another 17,200 are awaiting prosecution. Second, they may be living in Canada or other countries to escape military service and prosecution. Between 30,000 and 40,000 men are in this group. Third, they may be living "underground" in the United States or its territories and be liable for prosecution. No firm statistical evidence is available regarding the number of men in this group, but it is commonly estimated that this number is as large as that of the group which migrated.

V. The largest group of potential amnesty recipients did not initially claim conscientious objection to war. They were drafted or enlisted in military service and then discovered that their conscience would not permit them to continue performing such service. As a result, these men find themselves in one of three situations.

First there are those sentenced to military prisons after unsuccessful attempts to obtain discharges. Second there are those who were less optimistic about getting such discharges and deserted from the military; these men when apprehended are also subject to military prosecution for their actions. The third and largest group includes those who have received other than honorable military discharges for actions based on principled objection to war. These men face consequences somewhat less severe than a convicted felon, but carry a stigma as a result of the other-

than-honorable discharge that may hinder future chances of employment or favorable character references.

VI. Amnesty is in the best tradition of the United States; eleven presidents have granted amnesty following wars and rebellions. A general amnesty was granted to all following the United States Civil War — even to those found guilty of treason.

The time has come again to bind up the nation's wounds, wounds resulting this time from the Vietnam war. Amnesty will help reconcile the nation and a large group of its alienated sons.

VII. In light of the above considerations, the Peace Section of the Mennonite Central Committee:

1. Asks our congregations to welcome back those who because of conscience violated the Selective Service Act or Military Law to avoid military service.

2. Urges our Mennonite and Brethren in Christ bodies to support a universal amnesty which without being punitive would restore all civil rights to those having refused military service for conscience sake.

3. Appeals to the United States Government to recognize the value of the witness of the men who opposed the war by restoring full civil rights with impunity to these men.

4. Commends those governments such as Canada which admitted young men who chose to leave the United States rather than fight in the Vietnam War.

Adopted by the Old Mennonite Church General Assembly, August, 1973. Statement drafted by Peace Section of the Mennonite Central Committee, March, 1973.

NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

The war in Indochina has brought great destruction to three nations of Southeast Asia. Hundreds of thousands of persons have been killed, wounded or made homeless; the cultures have been disrupted; the landscape has been destroyed. The people of the United States must work for the rebuilding of Indochina, and the churches must take a sacrificial part in the reconstruction. But in this statement we will consider the harm which has recoiled upon this nation and its people.

The war in Indochina, the longest in the history of the United States, has also rent the fabric of American society. President Lincoln, responding to the hurts and disjunctions of another conflict, called upon the people of America to "bind up the nation's wounds." Tragically, the attention of the nation was too soon diverted from this task. Recrimination and injustice consequently lasted for an entire century. There is the danger that the American people will be similarly diverted today from the tasks of healing the nation.

The crisis of the war in Indochina, is fundamentally one of conscience. Some Americans thought the war just and necessary, while others thought it an immoral and tragic mistake. Likewise, some young men served in the armed forces, while others resisted participation.

These differences have not always been accepted as permissible divergences of public opinion or even as legitimate exercise of conscience. Instead they have led

to slander, recrimination, and the accusation that the basic ideals of the nation have been forsaken.

Consequently, families and friends have been divided by differing opinions on the conflict. For example, it is not unusual for parents to have one son who fought in Indochina, while another emigrated to Canada. Almost every aspect of American life has been affected by dissension over the war. The divisions between races, ethnic groups, age levels, and life styles have been widened as a result of it.

Not only has the whole nation suffered from division over the war, but those who served and those who resisted participation have especially suffered. Over 55,000 Americans have been killed in Indochina. Over 400 have been prisoners of war, held in North Vietnam – some for a very long time.

The veterans of the Vietnam era have also been hurt. Because the Selective Service System exempted and deferred many white, middle-class and educated men, those of non-white and lower economic backgrounds filled a disproportionate share of the ranks of the armed forces. Consequently, many of the problems of the veterans of the Vietnam era result from their backgrounds – approximately 20% of them return without a high school education – and their unemployment rate is substantially higher than for others in the same age bracket.

The nation is not using its resources to meet the needs of veterans as substantially as it did after World War II. Many Vietnam era veterans are therefore hurt, frustrated and angry because not only is their nation not showing gratitude toward those who served, but it also appears to be ignoring and rejecting them.

Deep scars were also inflicted on those who believed the war immoral and refused to participate in it. Over 60,000 persons, both draft resisters and deserters, have become exiles in other nations. More than 100,000 men have been prosecuted for draft violations. Untold numbers of draft resisters and deserters have gone underground to avoid prosecution. Although most have returned, or have been captured, over 350,000 members of the armed forces deserted during the Vietnam era.

More than 300,000 Vietnam era veterans have received less-than-honorable discharges, a stigma they will bear for the rest of their lives. Some have been convicted by court martials for crimes which would be considered felonies by civilian courts, but the actions of the overwhelming majority would either be misdemeanors or would carry no penalty at all in civilian life. The majority of less-than-honorable discharges result not from the decision of a court martial, but by the order of a commanding officer. Had these men and women not been in the military service, their records would not have been permanently marred by this imputation of wrong-doing.

At this time of national distress, we should remember that God is our final judge; He alone is Lord of the conscience. We will stand at the last awaiting His judgment and His mercy. Our human system of justice is not designed to separate the righteous from the unrighteous in any such final sense, but merely to maintain the safety and welfare of the human community. It exceeds its function when it divides the community and stigmatizes some citizens because of past views and actions which no longer pose a threat to the safety of the community, if indeed they ever did.

Healing the lesions in our society left by the war in Indochina will require human compassion and political forbearance. The war was begun despite the protests of a substantial minority of the American people and continued despite

the reservations of a majority. Some young men and women agreed with the majority – that the war was a mistake. Believing that it was also unjust and immoral, they refused to participate in it and thus incurred varying degrees of legal jeopardy. To hunt them down and prosecute them now is to add vindictiveness to victimization, neither of which is a proper basis for imposing criminal penalties and will only increase rather than heal the nation's hurts.

We further recognize the need for reconciliation on this issue within the Church. There have been Christians who entered the armed forces believing that the cause in Indochina was right and just. Other Christians have held opposite views, which led them to resist the war and the draft.

We believe that Christ works in His Church, calling us together to be one body as a sign of His intention for the whole human family. His reconciling love overcomes mistrust and suspicion and heals hurt and pain. Christ calls us to new Being, both personally and corporately.

As He calls those in His Church to be reconciled, so we covet for America the experience of reconciliation. For reconciliation to begin, however, certain actions are necessary:

Genuine reconciliation demands that amnesty be granted to all who are in legal jeopardy because of the war in Indochina. The only exception would be for those who have committed acts of violence against persons, and even these cases should be reviewed individually to determine if amnesty is appropriate.

Such amnesty would include:

(a) draft resisters and deserters who have exiled themselves to other countries;

(b) those currently in prison or military stockades, those on probation, those who have served their sentences, and those who are subject to prosecution for violations of the draft or military law;

(c) draft resisters and deserters who have gone underground to avoid prosecution;

(d) Vietnam era veterans with less-than-honorable discharges;

(e) those who have committed civilian acts of resistance to the war or are being prosecuted upon allegations of the same.

God alone knows what actually motivates the actions of persons, and few act for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who were in the armed forces. For instance, we do not believe that draft resisters and deserters deserve different treatment, since the latter would be penalized simply because their convictions may have changed after entering the service, rather than before.

We view amnesty not as a matter of forgiveness, pardon, or clemency, but as a "blessed act of oblivion," the law's own way of undoing what the law itself has done.

Reconciliation further requires creating the possibility of new lives for those Americans hurt by the war in Indochina. Veterans should have adequate help for their unemployment, education, and health needs. To accomplish this will require the interest and response of all institutions in the United States. In addition, veterans' benefits provided by federal and state governments should be increased to a level at least comparable to those afforded veterans of World War II.

The Church at all levels needs to make its healing ministry available to veterans.

Prisoners of war and those incarcerated in United States prisons also require the development of opportunities to help them live fulfilling lives. In addition, those Americans whose needs were not met but were even exacerbated because of the nation were diverted to the war effort, require the special attention of our nation.

By granting amnesty and providing opportunities for those hurt by the war in Indochina, we would begin to repair some of the damage to our nation inflicted by that war.

Adopted by the General Board of the National Council of Churches of Christ in the U.S.A., December, 1972.

NATIONAL INTERRELIGIOUS SERVICE BOARD FOR CONSCIENTIOUS OBJECTORS

NISBCO's commitment to respect for conscientious refusal to participate in war (all war or any particular war) leads NISBCO to a position of sympathy with the removal of legal disabilities incurred by persons opposed to the Vietnam War.

While NISBCO has not given its support to any particular amnesty bill or other proposed solution, it does wish to associate itself with the approach outlined in the statement of the Interreligious Conference on Amnesty (March 27, 1972), a conference in which many members of the NISBCO Consultative Council were represented.

Board of Directors and Consultative Council of the National Interreligious Service Board for Conscientious Objectors, November 28-29, 1972, Washington, D.C.

ROMAN CATHOLIC

NATIONAL CONFERENCE OF CATHOLIC BISHOPS

Resolution on the Imperatives of Peace

This is a critical moment in the history of the Vietnam War. Intensive efforts on the part of our government as well as other parties involved appear to be refining the final details of a settlement which will end the fighting. Recalling our exhortations a year ago to our nation's leaders and to leaders of all nations to "bring the war to an end with no further delay," we pray earnestly to Christ, the Prince of Peace, for a successful outcome of the present negotiations: that is for a just and lasting peace with stability and freedom for all the nations and peoples of Southeast Asia. We couple this prayer with a plea to both sides for an end of bombing and terrorism which are causing such loss of civilian life and destruction of the land itself. Indeed, a particularly anguishing and, in many cases, immoral aspects of this war has been the suffering and death inflicted on non-combatants.

It is vitally important that Americans now turn their attention to the task of reconciliation not only in Southeast Asia but also in our country. This war can well leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve our differences in a spirit of mutual understanding and respect.

Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spiritual. Our returning veterans, and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. Our sincere compassion should be extended to the families of men killed in the fighting. The dead, the maimed, and the missing in action should have constant remembrance in our prayers. Those who continue to serve in the military should also receive the moral and material support of the nation.

In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war. A year ago, we urged "that civil authorities grant generous pardons of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community." (Resolution on Southeast Asia, National Conference of Catholic Bishops, November, 1971). We again urge government officials and all Americans to respond in this spirit to the conspicuous need to find a solution to the problems of these men. Generosity represents the best of the American tradition and should characterize our response to this urgent challenge.

Generosity must also mark our participation in efforts to rebuild the war-torn nations and societies of Southeast Asia. There can be no doubt that the people of North and South Vietnam, Laos and Cambodia have suffered a tragedy far greater than ours. The dramatic and successful programs of aid and reconstruction carried out by the United States following World War II provide a model for what is demanded of us now. We must be unstinting in the expending of our moral, material and technical resources and skills on behalf of the people of Southeast Asia who have suffered so greviously.

Finally, we believe that the imperatives of peace now demand intensive study of many complex and pressing moral issues. The return of peace should not cause a slackening of attention to these matters. The experience of recent years amply illustrates the fact that grave ethical and moral questions regarding warfare remain unresolved. While recognizing the right of self-defense, we are nevertheless convinced that war is not apt means of settling disputes. The quest for viable means of preventing war and for effective alternative methods of resolving conflicts—through such agencies at the United Nations—is an urgent imperative. Technological skill in the science of war must not outstrip humane skill in the arts of peace. Church agencies, including the United States Catholic Conference, Catholic educational institutions, diocesan offices for justice and peace and organizations of the laity should in the months and years to come take a leading role in the effort to work for international justice and to find ways to ensure that peace—which, God willing, is returning to Southeast Asia and also to the United States—will be the permanent condition of human life in all nations and for all time.

National Conference of Catholic Bishops, November 16, 1972, Washington, D.C.

CONFERENCE ON MAJOR SUPERIORS OF MEN IN U.S.A.

Aware of the need to speak to value issues in American society, and mindful of our role as religious leaders within the Catholic community, we members of the National Executive Board of the Conference of Major Superiors of Men address ourselves to the critical question of amnesty.

We consider amnesty to be a positive act of compassion directed to our fellow citizens who are in prison or in exile because of their response to laws relating to military service. It is a proclamation that persons are free to return to their families and homes, exempt from all legal prosecution for whatever actions they may have felt obliged to take regarding participation in the Vietnam War. It restores them to their full legal status of living and working in the United States as free and useful members of society.

Amnesty does not mean "forgiving"; it is not a judgement of condemnation, nor an act of condonation. It is simply an act of "forgetting," a wiping clean of the slate, or overlooking of any past legal transgression.

We feel that the most urgent need facing the United States at this moment is the need for *reconciliation.* After a decade of bitter dispute over the Vietnam war, we Americans need to be brought together, to bind up our wounds, to unite in a common purpose to promote peace and justice.

Thousands of young men are currently in prison or in exile from the United States because of the positions which they took on the Vietnam war. Their status is both a symbol and a cause of division in our country. Amnesty would be a healing and reconciling measure designed to overlook the past and move a united nation into the future. It would restore confidence in the ability of our government and its people to foster a sense of renewed purpose, especially as we approach the 1976 Bicentennial Celebration.

We feel that the criterion to be used in deciding what kind of amnesty is chosen is clear; what best promotes the goal of reconciliation? We believe that a *universal* and *unconditional* amnesty will do the most at this time to promote reconciliation.

(1) It should apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service. This will affect those who have avoided the draft through going underground or leaving the country, those who have been imprisoned because of non-cooperation or forms of conscientious objection not recognized by our courts, and those who have left military service or have been imprisoned because of refusal to take part in combat. (We are not speaking here of criminal offenses unrelated to the draft and the war.)

(2) If it is to be a true forgetting, the amnesty must not impose any penalizing conditions, such as alternative service or recording the facts of the case in public records. Any penalizing conditions would not heal division nor restore harmony to the nation.

As American Catholic religious leaders committed to justice and peace, we call upon the President and the Congress to take the necessary steps to grant such an immediate universal and unconditional amnesty.

We are aware of the political difficulties involved in such an action and of the heated debate to which the issue of amnesty gives rise. There are certainly honest differences of opinion about the desirability, feasibility, and consequences of such

action. However, it is our considered opinion that the amnesty we call for is the surest path to the promotion of reconciliation, in our nation.

In order to commit ourselves to the task of reconciliation, we are taking the following actions:

(1) We are sending a copy of our Call to all of the members of the Conference of Major Superiors of Men, inviting them to share this statement with their own communities, to thereby stir up discussion and reaction, and to send their response to us.

(2) We are communicating our position directly to President Nixon and to all members of the Congress.

(3) We are inviting members of the Conference of Major Superiors of Men to join their signatures to ours in support of this statement on amnesty at the Annual Assembly in June, 1973.

(4) We are asking the American Catholic Theological Society to commission a task force on the theological dimensions of amnesty in order to deepen the understanding and further acceptance of this act of reconciliation by Americans.

Issued by the Conference of Major Superiors of Men in the U.S.A., Inc., Washington, D.C., May 28, 1973.

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

The Southern Christian Leadership Conference today launches the National Movement for Amnesty. We call upon all concerned to join this Movement so that the innocent will not have to suffer for crimes never committed. We will utilize the resources of all dedicated Chapters and Affiliates Nationwide to dramatize the issue of Amnesty for the young men who refused to fight in the Vietnam Conflict.

We will speak to the conscience of the people in this Nation by conducting massive non-violent confrontations with the elected officials of our land, including President Richard M. Nixon.

Especially President Richard Nixon because with one stroke of the pen Amnesty could become a reality for thousands today. The thousands that ran away to Foreign soil rather than be forced to fight in an unjust war. We say to Mr. Nixon, the Congress and the People – let them come home NOW.

We further urge all of our elected officials to stand up and be men and women and join this Movement. We urge the people of this Nation to register their feelings with their Congressmen and Senators by writing letters, sending telegrams and doing whatever is necessary to get your point across.

We are calling on the Congressional Black Caucus and all other elected officials to initiate the passage of legislation that would grant Amnesty immediately to all of the young men who registered as Conscientious Objectors and those who refused to fight in the illegal, unconstitutional Vietnam Conflict.

We feel that if the President of these United States does not heed to the call of the people of this Nation to grant Amnesty for those innocent young men, it is going to be a very short while before he is indeed impeached from office.

Our Organization has a moral obligation to further the Dream of our late beloved leader, The LATE DR. MARTIN LUTHER KING, JR., by fighting the triple evils of Racism, Militarism and Economic Exploitation.

We urge you to join this Movement so that we can protect the few Freedoms that we so recently won.

From a Statement released by Rev. Ralph David Abernathy, National President of the Southern Christian Leadership Conference, November, 1973.

UNITARIAN UNIVERSALIST ASSOCIATION

Whereas, hundreds of thousands of Americans have unjustly suffered a loss of civil rights, liberty and jobs because they have been in opposition to the Indochina War or to the racism and oppression of the American military and draft systems; and

Whereas, according to Canadian Department of Immigration statistics there are tens of thousands of anti-war exiles in Canada alone while, however, the majority of war resisters are inside the U.S., where an estimated 200,000 live underground, thousands behind bars, many with court records, and over 500,000 veterans suffer from less than honorable discharges issued during the Indochina War era; and

Whereas, any amnesty that separates for different treatment pre- and post-induction resisters (draft resisters and those who resisted or separated themselves from the military) fails to recognize that class and race factors more than anything else resulted in these distinctions and that such an amnesty would essentially discriminate against working-class and a disproportinate number of non-white resisters, those who have already been forced to bear the heaviest burdens of the war,

Be It Resolved: that the 1973 General Assembly of the Unitarian Universalist Association urges that the Congress of the United States enact a universal and unconditional amnesty (with no alternate service or other punitive measures, and to avoid unworkable, unjust case-by-case judgements) for:

(1) All military resisters including so-called "deserters", and draft resisters in exile or underground in the United States;

(2) All people who, because of their opposition to the Indochina War, have been arrested, have been or are now in civilian and military prisons, or for this reason are now being sought for prosecution – this includes a clearing of their records;

(3) The more than half-million Vietnam era veterans who have been discharged from the military with less than honorable discharges who will suffer from permanent loss of civil rights, and discrimination in employment without an amnesty. The classification of military discharges as honorable or otherwise should be eliminated retroactively into one single category of discharge.

Be It Further Resolved: that the UUA 1973 General Assembly urges member societies of the Association to give specific attention to the issues involved in, and the means toward achieving a universal, unconditional amnesty by initiating discussion within each society, guided by materials to be developed by the Department of Education and Social Concern, and by members of these societies individually and collectively communicating, educating and organizing of this issue to the limits of their energies, time and commitment until such time as a universal and unconditional amnesty is effected for all of those who have been, are being,

or would be punished for their resistance.

By supporting complete amnesty, we do not mean to imply lack of recognition of the hardships, heartaches and sufferings of all other citizens who were affected by United States military involvement in Southeast Asia.

Resolution passed by the Unitarian-Universalist Association at its General Assembly in Toronto Canada, May 28 to June 3, 1973.

UNITED CHURCH OF CHRIST

Amnesty for War Objectors

In the interests of reconciliation and the binding up of wounds, for the sake of our freedoms and to allow our high respect for conscience, in the best tradition of a strong and secure democracy, in the name of Christian love, we urge the President of the United States to grant, at the earliest possible opportunity, amnesty and pardon for those who for actions witnessing to their beliefs have been incarcerated, deprived of their rights of citizenship, or led by their conscience into exile during the course of the nation's great agony in the Vietnam war. We urge these bold actions because this nation needs, and is strong enough to embrace, both those who have engaged in the Vietnam conflict and those who have opposed it.

Seventh General Synod of the United Church of Christ, June 25 - July 2, 1969, Boston, Massachusetts.

Amnesty

In keeping with the spirit of the position taken by the 7th General Synod, entitled Amnesty for War Resisters, the 8th General Synod (a) calls upon the Congress of the United States to grant amnesty to those young people imprisoned or in exile as a direct result of their refusal to participate in the war in Indochina; and (b) directs the Instrumentalities of the U.C.C. to act to promote such legislation for Amnesty.

Eighth General Synod of the United Church of Christ, June 25-29, 1971, Grand Rapids, Michigan.

UNITED METHODIST CHURCH

Be it resolved that the Board of Global Ministries issue the following statement:

As Christians, embracing the concepts of love and forgiveness, we reject President Nixon's terming amnesty to be "the most immoral thing" he "could think of".

We understand amnesty to be a legal term for reconciliation, and the teachings of Christ clearly call us to be agents of reconciliation.

We call upon the President of the United States to reaffirm his stance, stated in his CBS interview January 2, 1972, where he declared he would "be very liberal as to amnesty".

This we believe is in our American tradition, following the position taken on amnesty by previous presidents.

It also follows our Judeo-Christian tradition, which we affirm.

We believe that amnesty is not immoral!

Be it also resolved that a copy of this statement be sent by the secretary to the President of the United States.

Board of Global Ministries of The United Methodist Church, November 1, 1972, Atlantic City, New Jersey.

Resolution on Amnesty and Reconciliation: majority report

There can be no authentic peace until all involvement, military and political, in the Indochina War is ended. We recognize that the war has caused a crisis of conscience perhaps unparalleled in the nation's history. We need to overcome the paralyzing divisiveness of the war on our society and to mitigate as far as possible the tragic consequences of the war.

When the war ends, we believe that genuine reconciliation demands a broad and general amnesty, without qualifications or conditions, to all who are in legal jeopardy because of the war in Southeast Asia. God alone knows what finally determines the actions of human beings, and all of us know that few of us do anything for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who served in the military. We do not dishonor but respect the consciences of those who fought and died. We see amnesty, not as a matter of forgiveness, but as one step toward the reconciliation of the society.

The church has a major responsibility to initiate or join efforts to secure amnesty and restore full civil liberties for all such persons who suffered during the Vietnam era who should not be scarred for life. Of special importance is our need to meet our obligations to persons who have fought the war, to those who were killed, and to the plight of many Vietnam era veterans. The families of those killed, especially children, deserve every assistance that a compassionate church can provide. The church has an immediate ministry to provide pastoral care and secure other essential service for all such persons and their families through United Methodist personnel and cooperation with other churches and responsible agencies.

Each member of The United Methodist Church is challenged to express the transforming power of Christ-like love through his or her commitment to offer understanding and reconciliation to *all* persons, who have been affected by the tragic consequences of the War, in order that the healing of a divided society may begin.

Amnesty: minority report

There can be no genuine peace until all involvement, military and political, in the Vietnam conflict is ended. We recognize that the conflict has caused a crisis of conscience among people. We need to overcome the divisiveness of the war on our society and to mitigate as far as possible the tragic consequences of the conflict.

When the Vietnam conflict ends we urge that the appropriate government authorities, given the power, consider the granting of paroles to those persons incarcerated in penal institutions for conscientiously objecting to participate in the selective system due to their feelings of conscience above the Vietnam conflict.

When the conflict ends, we further urge that the appropriate government authorities consider leniency in prosecuting those draft resistors and deserters who have exiled themselves to other countries, those draft resistors and deserters who have gone underground to avoid prosecution and those who have committed or are being prosecuted for civilian acts of resistance to war.

When the war ends, we urge that the appropriate government and military authorities re-examine the dishonorable discharges given to members of the Armed Forces during the Vietnam conflict if such discharges were originally given for the failure of the serviceman receiving the same to cooperate or participate in the Vietnam conflict based upon his feeling of conscience about such conflict.

Persons excepted from our above urgings would be those persons to be charged with or convicted of acts of violence whether against persons or property. We do not condone acts of violence.

The church has, likewise, a responsibility to the persons who fought the conflict and to the families of those killed in such conflict. Such persons and families must have every assistance that a compassionate church can provide. The church has an immediate ministry to provide pastoral care and secure other essential service for all such persons and their families through United Methodist personnel and cooperation with other churches and responsible agencies.

Each member of The United Methodist Church is challenged to express the transforming power of Christ-like love through his commitment to offer understanding and reconciliation to *all* persons, who have been affected by the tragic consequences of the war, in order that the healing of a divided society can begin.

1972 General Conference of The United Methodist Church voted the above two amnesty statements printed in the "Book of Resolutions", May, 1972, Atlanta, Georgia.

UNITED PRESBYTERIAN CHURCH in the U. S. A.

The General Assembly adopted the following statements and recommendations concerning amnesty.

In a statement on "War, Peace, and Conscience" the 181st General Assembly (1969) said:

"Redress – Available evidence indicates that the present administration of the Selective Service law has led to miscarriage of justice in some individual cases; and furthermore, the law itself does not provide relief for those who are morally and conscientiously opposed to a particular war. It is imperative that steps be taken to redress whatever miscarriages of justice have occurred under these conditions as soon and as systematically as possible. Moreover, amnesty for those whose violations of law are based upon higher loyalties is a cherished possibility within the American tradition and compatible with the understanding of God as a God of mercy. Therefore, redress of grievances should include consideration of amnesty in appropriate cases."

In its recommendations to public authorities and the general society regarding public policy the Assembly –

"Asks the Congress, the President, other officials and our fellow citizens for reconsideration of the plight of those young men who, in good and sensitive conscience, have found that they cannot participate in a particular war but have not had redress or relief under existing laws. We urge retroactive recognition of their claims and reduction of punitive sentences, together with appropriate amnesty as soon and as systematically as possible."

181st General Assembly (1969) of the United Presbyterian Church in the U.S.A.

In their 183rd General Assembly said:

"We. . . . .say our government's continuing military involvement in Indochina is immoral and unjust. Therefore, the 183rd General Assembly of the United Presbyterian Church in the U.S.A., affirms its conviction that a political settlement is the only legitimate solution of the war in Indochina. To this end, appreciating the fact that 50% of all U.S. troops have been removed from South Vietnam, we. . . . .warn that the civil rights of dissenters are particularly vulnerable during times of national crisis and tension, and that therefore special diligence must be exercised by the Church, citizens, and the government to preserve those rights. We specifically urge Presidential amnesty for those who are imprisoned or expatriate for conscientious dissent to this war."

183rd General Assembly (1971) of the United Presbyterian Church in the U.S.A.

UNITED PRESBYTERIAN CHURCH IN THE U.S.A.

The General Assembly adopted the following statement and recommendations concerning amnesty:

In response to Overture 141, we know and respond to the saving love of Jesus Christ and therefore, we dare to be agents for God's Love in the world.

The question of amnesty for those who have been in conflict with the government because of opposition to the war in Indochina is much misunderstood. Solutions will arise as its moral and theological aspects are exploted beyond merely political considerations. We must regain a proper perspective and remember that Christ's Church has a ministry of reconciliation with justice which includes attending to opposing views.

Because official American participation in the ground war in Indo-China has finally come to an end since the General Assembly last spoke of amnesty, we believe that there is an urgent need for the church to study amnesty in depth. Such a study should include the historical, legal, political, moral, and theological dimensions of amnesty, stressing the unconditional nature of amnesty. Particular attention would be paid to all persons who might be affected by amnesty or further punishment. Study should lead to action in Christian concern to influence others, the media, and the government to achieve solutions that strengthen peace.

Therefore, the 185th General Assembly (1973):

A. Reaffirms the amnesty pronouncements of the 181st General Assembly (1969) and the 183rd General Assembly (1971).

B. Urges that all congregations undertake a study of the question of amnesty in 1973-74 under the guidelines of this statement, using the materials now becoming available.

C. Requests the Program Agency to continue to provide adequate study materials and to affirmatively communicate to the church at large the urgency of the need for study and the availability of such resource materials.

D. Suggests that study of amnesty be considered as part of the peace priority program.

E. Urges all United Presbyterians to prayerfully undertake a re-examination of their views on amnesty.

185th General Assembly (1973) of the United Presbyterian Church in the U.S.A.

31-658 O - 74 - 35

Mr. POLING. Yes, sir, and I would like to call to your attention that this book includes statements of approximately 26 national bodies and nearly all of them call for an unconditional amnesty. I would like to express my appreciation to the committee for the opportunity to testify on behalf of the General Board of the Church of the Brethren. Thank you.

Mr. KASTENMEIER. Thank you. I have only one question. You indicated that your church has had a number of members who refused to cooperate with the Selective Service System and who have been convicted as felons.

And my understanding is that because the refusal was based on conscientious and religious convictions, that they ought to be excused. Why is it they are felons? Is this in years past? Is it the case today?

Mr. POLING. It is both in the past and in the present. In the past of course there was not adequate legal provision for members who have beliefs such as ours and especially in World War I we had a number of men who were forced to face incarceration because of their beliefs.

In more recent times the position of the church is that we should consider very carefully how our beliefs do relate to our responsibility as citizens and the position of our church has been that approval is given to members who choose to become conscientious objectors and do serve alternative service, but we also give general support to those who, because of their conscience, refuse to register or refuse to cooperate with the Selective Service System. And most of those who would have problems would be those who either left their alternative service projects or refused to cooperate in one way or another or refused to carry a draft card or something like that.

Our church has supported this as being consistent with the church's historical policy and approach regarding military service.

Mr. KASTENMEIER. I yield to the gentleman from Massachusetts.

Mr. DRINAN. I want to thank you for your testimony. I think it is elegant. I hope as the weeks and months go on and we struggle with this problem that you continue to send us encouragement and more specifically suggestions as to how the legislation can be written.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Thank you. And thank you, Mr. Poling, for this statement of the Church of the Brethren. Did I understand you to say that your church did not take a position in regard to civilian service as to whether your members should refuse such service or not? In other words, you supported both of them?

Mr. POLING. Yes. Mr. Smeltzer, do you know when the statement was passed?

In a 1907 statement the Church of the Brethren does give equal support to those who do alternative service and those who feel that it is opposed to their conscience to do such service and refuse to comply with the law.

Mr. SMITH. But it is not the official position of your church that you should refuse alternative service? It was a matter of the individual's conscience?

Mr. POLING. Yes; we give equal support both serving alternative service and refusing to serve.

Mr. SMITH. Was your experience and the experience of your church during the Vietnamese war in regard to Selective Service, that is membership in the Church of the Brethren as such, was that sufficient basis for one of its members, who actually was a good member, to be granted conscientious objector status?

Mr. POLING. Yes; I am not clear on the question though.

Mr. SMITH. Well, I think, for instance, if you were a member of the Friends or the Quakers and were a good member of the church, that this in itself was a sufficient basis for a local draft board to give you a conscientious objector status and was the same true for the Church of the Brethren?

Mr. POLING. Yes; it has been very often true depending to a great extent upon the local board. And in areas where the Church of the Brethren does have a strong population, the local board tended to be more sensitive to this viewpoint.

We have had some problems in areas where the Brethren were more sparsely located and local boards were not familiar with our beliefs.

Mr. SMITH. But your church has taken a stand that Christians should not participate in war?

Mr. POLING. Yes, sir.

Mr. SMITH. Were any of your members who refused alternative service as conscientious objectors, did any of them go into exile to another country?

Mr. POLING. There may have been some. We are not aware nor do not have full information about any who were in exile or are in exile at the present time. It very well may be the case.

Mr. SMITH. But invariably some or perhaps many of your members were prosecuted under the law and were convicted?

Mr. POLING. Yes; we do have members who have been convicted. I must add, the predominent number of them served in alternative service as conscientious objectors.

Mr. SMITH. Most of them did?

Mr. POLING. Yes.

Mr. SMITH. But a few who found the dictates of their conscience such that they could not even follow alternative service, they for the most part have been convicted under the law?

Mr. POLING. Yes, sir.

Mr. SMITH. Thank you.

Mr. MEZVINSKY. I want to thank you for your testimony and reiterate that I hope you keep us informed of your position. My only question is, was there any vote taken on conditional amnesty as such or did your group vote specifically on the question of unconditional amnesty?

Mr. POLING. If I can remember, the paper that we passed is substantially the paper that is present before you now. There was an amendment made from the floor during the debate that would have changed the paper to include conditional as opposed to unconditional amnesty. I am not informed sufficiently on what the vote on that was, but it was defeated.

Mr. MEZVINSKY. Thank you very much.

Mr. KASTENMEIER. Thank you for your contribution here today.

[The statement of James N. Poling in full follows:]

TESTIMONY OF JAMES N. POLING ON BEHALF OF THE CHURCH OF THE BRETHREN GENERAL BOARD

Mr. Chairman, I am James N. Poling, of Route 1, Thomasville, Pennsylvania 17364, pastor of the West York Church of the Brethren. Today I am here as a spokesman for the Church of the Brethren General Board and the roughly one thousand congregations that Board represents across this country.

The Church of the Brethren at its 1973 Annual Conference voted support for a *full, unconditional amnesty for all our citizens suffering alienation and disadvantage because of acts of conscience related to participation in war.* Our complete conference statement is attached and is to be considered an integral part of this testimony. The following interpretation, however, seems important at this juncture.

I. AMNESTY FOR OUR MEMBERS

Whenever men have been drafted into military organizations in the history of the United States, members of our church have refused to comply. Accordingly, following most wars, especially since the Civil War, we have had members in need of amnesty.

The official position of our church, based on the Scriptures, is that Christians should not participate in war or learn the art of war.

Even with the development of provisions for civilian service by conscientious objectors, our church has cautioned us to put obedience to our Lord above all human obligations.

We have had, therefore, a number of members who refused to cooperate with the Selective Service System and who have been convicted as felons. These and others who have said "no" to military service in other ways have had the strong and official support of our denomination.

At the present time, we have members of our church who, because of their Christian convictions and their adherence to the teachings of their faith, have lost certain rights as citizens of the United States, and who need amnesty if full citizenship is to be restored. For these members we appeal to you for total and unconditional amnesty.

II. AMNESTY FOR OTHERS

Our concern is not only, or even especially, for our own members. As we have struggled with the war in Southeast Asia, we have become aware of many others who have strong and sincere convictions about war, perhaps coming to their positions from quite different backgrounds from ours. We have learned to have a deep and abiding respect for their conscientious beliefs, and believe that our nation is stronger for their contribution as citizens.

Our church has struggled to continue government recognition of religious convictions, and we believe one of the outstanding strengths of our nation is this freedom and predominance of conscience.

As difficult and divisive as the war in Southeast Asia has been for all of us, it has revealed a deep strength of character among our citizens. Many have chosen suffering and rejection in order to maintain their integrity of conscience.

At the present time, we know of many persons outside the membership of our church, who because of deeply held convictions about war, have suffered an abridgement of their rights as citizens of the United States. For these persons, especially, we appeal to you for total and unconditional amnesty.

III. AMNESTY FOR ALL PERSONS ALIENATED BECAUSE OF THE WAR

As we understand amnesty, it is a legal provision for restoring the rights of a group of persons without necessarily resolving the issue which originally caused the alienation, or without placing blame or declaring total innocence. It is a legal approach which is appropriate when reconciliation of persons and groups is a preferable political and moral alternative to continued conflict and retribution.

As citizens of the United States, we believe that an act of reconciliation related to the war in Southeast Asia would be appropriate at this time, and that amnesty would be an essential first step in this process.

There are obviously many persons who are in need of restoration of certain rights and opportunities as citizens because they said "no" to the war in Southeast Asia and became convicted felons, deserters, violators of the Selective Service law, or received less than honorable discharges from military organizations.

The issues which created the alienation of these persons are still being debated in our nation and are not likely to be resolved by consensus in the near future.

Because the citizens of our nation were so divided on the issues of this war, it is unfair and unwise to continue the punishment of some who arrived at and acted on deep religious or moral convictions.

In order that many persons might have their full opportunities as citizens restored, and in order that our nation might make a move toward unity and reconciliation in these troubled times, *we urge you in the Congress to authorize and legislate a full and unconditional amnesty to all who are alienated from our nation because of war.*

Amnesty

AN ANNUAL CONFERENCE STATEMENT

The following *Statement of the Church of the Brethren on Amnesty* was adopted by the Church of the Brethren Annual Conference, Fresno, Calif., June, 1973.

INTRODUCTION

There are thousands of persons today who have felt the effects of the *dividing wall of hostility* which has been generated by war. Social relationships in the family and between families have been damaged because persons have had different beliefs and convictions about war. Even after the war has been declared over, there remain divisions which cause suffering for persons and groups in our society.

The Church of the Brethren regards this situation with concern and sorrow not only because we believe that war is sin, but also because we understand that the gospel message can bridge the walls of hostility which exist, between exiles, families, and government.

At its root, the concept of amnesty had to do with the biblical understanding of reconciliation. How can there be reconciliation between parents and children in the United States? How can there be reconciliation between the government and exiles? How can there be reconciliation between those with different opinions on war? How can we restore the unity of our nation while maintaining integrity both for the country and its people?

We, the members of the Church of the Brethren, believe that reconciliation is most likely if the following things occur:

1. The United States Government should grant unconditional amnesty to all those who are alienated from their nation because of their personal acts of conscience in relation to war.

2. Christians, both individually and as denominations, should became agents of reconciliation wherever such service is needed.

BIBLICAL BASIS

In the New Testament, the theme of reconciliation is central to the understanding of God's love for persons in Jesus Christ. The gospel calls us to a ministry of reconciliation.

First, according to Ephesians 2:14ff, reconciliation is a gift of God. *For he is our peace, who has made us both one, and has broken down the dividing wall of hostility . . .* Through God's action in Jesus Christ, there is reconciliation between people while there are differences (John 10:16; Galatians 3:28). Even though the disagreements on many issues separate people within our nation, there can be reconciliation if we accept it as God's gift.

A declaration of amnesty follows this model. Through amnesty, a government can forget the legal penalties connected with the actions of a group of persons, and thereby declare that the unity of its people is more important than continued hostility and division. Amnesty can bring reconciliation even though significant differences remain on the issues at stake, because such an action removes the punitive measures related to such differences. Reconciliation is a gift of God and he will bring peace if we trust him (Psalm 118:8–9).

Second, according to II Corinthians 5:18, the church is called to be an agent of reconciliation. (*All this is from God who through Christ reconciled us to himself and gave us the ministry of reconciliation.*) The Church of the Brethren has always taken this Scripture seriously and we have set out to be reconcilers. As Christ was the mediator between sinners and God, so the Chuch is called to a

ministry of reconciliation between persons and God and between people in conflict with one another.

Whatever the government does about amnesty, there will be need for reconciliation. Many men have become alienated from their families and local communities and now want to be reunited. Many young people could return home now without legal difficulties, and may if they have a supportive community. Some may decide to return and face the legal penalties rather than remain as exiles. On many levels there is work of reconciliation which could be done by the Church. The Scriptures lead us to such a ministry.

HISTORICAL BACKGROUND

Throughout its history, the Church of the Brethren has taken seriously the task of bringing persons together. During the Revolutionary War the Brethren refused to side with either army, but worked to bring peace in their communities. It was Elder John Kline in the War between the States who tirelessly rode the circuit of reconciliation to keep persons at one in faithfulness to Christ. During and following World War II, Brethren took in and aided Japanese-American refugees. The present situation presents the Brethren another opportunity to be involved in healing the wounds of war and to be faithful to the ministry of reconciliation.

THE PRESENT CRISIS

The question of amnesty is being debated in the press, discussed on radio and television, and kept much alive in our nation's capital. Several amnesty bills and resolutions have been introduced since the present session of Congress began.

In any discussion of amnesty, we are talking about hundreds and thousands who have suffered some legal disability because of war. For instance, tens of thousands of these persons have come out of the military service in the Indochina War with less than honorable discharges, have been convicted of Selective Service violations or have become exiles, for conscience's sake.

CONCLUSION

Therefore, we come to these conclusions on the question of amnesty:

1. As United States citizens, we believe that reconciliation is more important for our nation than the punitive wrath of the law. We favor unconditional amnesty for all those who due to an act of conscience are alienated because of war. We recommend the officers of Annual Conference make these views known to the President and appropriate persons in Congress.

2. As Christians we believe that our ministry of reconciliation begins now. Whatever the government does, we must begin working now to bring reconciliation between those who have become separated because of their views on war. We recommend the following action:

(*a*) We recommend that our members and local congregations provide a supportive community for all persons who desire reconciliation with their government, families, and/or local communities. This might involve such activities as providing a context in which persons can talk with their parents or children, providing a home for those who need a place to live while becoming reestablished in a community, helping men who choose to face a prison experience.

(*b*) We recommend our General Board provide program and resources to help members and local congregations be agents of reconciliation for persons alienated from their government, their families and/or their local communities. This might involve communication with and support of exiles and deserters in various parts of the world, publicity on our services, and education of local congregations.

We pray that reconciliation can become a reality and that our nation can become unified around purposes which reflect the will of God in our time.

Adopted by the Church of the Brethren Annual Conference, 1973.

Mr. KASTENMEIER. I would like to call as the last witness, Mrs. Peg Mullen, State Chairman, Iowa Gold Star Families for Amnesty and Reverend John Smith, Professor of History, St. Ambrose College, Davenport, Iowa.

Both of these witnesses may come forward.

And I note you both have very short statements. I would ask that Mrs. Mullen proceed first, if you will.

TESTIMONY OF MRS. PEG MULLEN, STATE CHAIRMAN, IOWA GOLD STAR FAMILIES, ACCOMPANIED BY REV. JOHN SMITH, PROFESSOR OF HISTORY, ST. AMBROSE COLLEGE, DAVENPORT, IOWA

Mrs. MULLEN. Thank you. My son, Michael Mullen, was killed 4 years ago in Vietnam by our own artillery. He was killed, in military terminology, by "friendly fire" and was, therefore, a "nonbattle casualty" because of an artillery incident officially referred to as a "misadventure" in a war that was undeclared. He was 25 years old.

Now, we are a very ordinary family, we are just simple Iowa farmers, and we are not hampered or confused by the political considerations, nor the political motivations, nor political expediences that you are, so we can speak plainly. We know and can accept what you politicians are still simply unwilling to admit and that is that the war in Vietnam which took our son was a senseless, terrible, tragic blunder and now we see that you want to compound this mistake by punishing further those young men who refused to be deluded by your war from the beginning.

Gentlemen, the whole Vietnam war was a misadventure. We are all its nonbattle casualties. Only those who have lost sons and husbands and brothers in Vietnam can understand the depth of the anguish and the bitterness my son's death makes me feel. I want to believe—I desperately need to believe that my son's life was not wasted, that he died for some higher ideal, but what comfort have you given me?

If Congress is going to insist on misinterpreting "amnesty" as meaning to pardon, then the amnesty issue will remain too emotionally charged ever to be resolved. A pardon implies guilt, and I would no more expect a young man who refused to kill in Vietnam, whose profound moral and spiritual opposition to that war left him no alternative but to leave the country, to admit that he was guilty of a crime, than I would expect Congress, than I would expect you, whose support of that war permitted it to endure for so long, at so dreadful a cost in young lives, to admit that it, too, was guilty of a crime.

Amnesty, in its original Greek, meant forgetfulness. Forget that these young men left rather than serve. Forget the draft inequities that forces them to leave. Forget the lies—and I repeat the lies—told you by the Presidents, the generals, the spokesmen for the State Department and the Pentagon. Forget all the moral and philosophical dilemmas posed by the war in Vietnam which tore this Nation apart for over a dozen years. Remember only this: the American people have suffered enough because of this war and we want our children home.

Vietnam's dilemmas cannot be resolved, but only a fool still believes "My Country, right or wrong." We all now understand that if our country is wrong, we, as citizens, have an obligation to correct it. Who is the more loyal citizen: the one who agonizes over his Nation's policies and attempts to change them? Or is docile acceptance of governmental policy—no matter how immoral and misguided—the more acceptable, the truer mark of a loyal citizen? If it is the former, then you cannot and must not punish those young American citizens whose unwillingness to take part in the war in Vietnam was based on a higher sense of allegiance and responsibility to America's ideals. If it is the latter, if the mark of good citizenship is docile submission to governmental policy, then all those convicted and imprisoned and executed at Nuremberg for war crimes should have been freed.

In 1964 the American people voted for that Presidential candidate whom they believe would most swiftly bring that war to a close. Six years, 6 long years, before my son's death an overwhelming majority of the American people expressed by that vote they wished no further involvement in the Vietnam war. If you interpret these young men who refused to serve in Vietnam as having abandoned America in her time of need, then I ask you—did you not, yourselves, as the duly elected representatives subject to the will of the American people, by allowing that war to go on and on and on, abandon us in our time of need?

What difference is there between a government which forces its dissidents to seek exile, and a government which exiles its dissidents? Today, Canada, Sweden, and Europe, the world is filled with a generation of young American Solzhenitsyns. If I am to believe that my son sacrificed his life for some higher ideal, if I am to receive any comfort from my son's death, then let me believe that he died so that some other mother's son, somewhere, might now come home.

Thank you.

Mr. KASTENMEIER. Father Smith.

Reverend SMITH. Yes, thank you. The statement is brief and I have a slight advantage over Mrs. Mullen and the advantage over Mrs. Mullen's statement is that it was written in Davenport, Iowa, and it does reflect in part what is happening in that geographical part of the Nation.

We urge that Congress not wait for the Executive action on amnesty but act promptly to provide unconditional relief for the hundreds of thousands of young Americans who are facing criminal or administrative penalties for nonviolent acts of evasion or resistance to the draft, to the military, or to the war in Southeast Asia.

After counseling hundreds of draft age Americans regarding their rights under the Selective Service System from 1967 until 1972 we are overwhelmingly convinced that these young men were acting from conscience positions. Their fault, if any, was that they discovered the terrible mistake of Vietnam before most other Americans.

In a larger sense, and this of considerable current concern to me I suppose as a teacher and as a priest, unconditional amnesty can be a much needed act of national reconciliation healing the wounds of war, which has seriously torn apart the very fabric of American society at home as well as abroad.

If our legal system and our court procedures cannot be responsive to matters of conscience and to new knowledge and new facts, we may be condemned to live through more Vietnams and more Watergates.

So to make the law of our land an unnatural absolute is to make captives and victims of us all.

Unconditional amnesty can mean then that we the people, who make our laws, readily assume the responsibility of adjusting those laws and their application to the higher demands of conscience and personal truthfulness. Judgment in the absolute we can leave with confidence to God.

May I add just one brief comment, Mr. Chairman. It seems to me I would have to agree with James Reston, Jr. and some others who have suggested that it may well be difficult for us to consider amnesty

outside of the very, very annoying and the very difficult position that our country was wrong. I know that this raises the whole issue of patriotism. But from the activity on campus, from the activity in the communities, I am terribly impressed that the collapse, whether we call it a moral collapse or however we want to describe it, really is a terible flight from decisionmaking, from involvement on the lowest grassroots level. And part of this is due to the fact that we have made kind of a god out of our country; civil religion, if you want to call it that or not.

But I would certainly wish that somehow we could consider the possibility that we were wrong and that we could live perhaps with that. And in that context then the amnesty is above the rigor of the law as such. Thank you.

Mr. KASTENMEIER. Thank you. I yield to the gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman. I want to thank the witnesses from Iowa for coming here and for giving us a view from the Midwest.

I would like to have either witness describe a recent incident that happened in Iowa concerning a young man that came home to his father's funeral. This illustration is a good example of what this problem has on the community.

I would certainly like to have your comments on that.

Mrs. MULLEN. Father Smith is more familiar with the incident than I am.

Reverend SMITH. A young man by the name of Allen Kelley, who had been refused a CO classification and who went through all of the appeals, State and national, and finally when the issue of induction came he refused to be inducted and he left for Canada, recently his father died in Rock Island, Ill., and after several years in Canada he came back—excuse me, I mean he had been in Canada for several years and his father died and he came back for the funeral and was arrested and apprehended at the time. It was made quite clear in the papers that the FBI do watch obituaries to keep themselves in touch with some of these young men.

I think what Congressman Mezvinsky may be alluding to is the remarkable local response as reflected in the newspapers. It was quite clear after several days that the community was responding very warmly to this young man and I think it was something a little more than just that it did not seem quite cricket that this was the way it should be done, but this was really where the amnesty issue was that they were concerned with. These are the young men that we are deeply concerned about.

Mr. MEZVINSKY. Mrs. Mullen, in telling us of the circumstances surrounding your son's death, you made a very eloquent statement. As you ended your testimony you said that you hope he died so that some other mother's son somewhere might now come home.

Would you care to elaborate on that ending and why you feel so deeply that there is a connection between your son's death and the question of amnesty?

Mrs. MULLEN. Well, I feel that almost everyone that testified against amnesty continuously talks about the mothers and fathers who lost sons and how they feel.

How many of you know how we feel? How many of you talked to fathers and mothers that actually lost sons?

We really know the anguish of a son being gone and in my heart I feel that these men that died in Vietnam, when they died, they are not thinking of dying for their country. They are dying and fighting to save their own lives. They kill. My son became a killer because he did not want to die there. He did not become a killer in Vietnam because of his country.

And this is what all of you seem to forget. There are no heroes in a foxhole in Vietnam. There are none as far as this country is concerned.

And they are just as unpatriotic at that stage as the man who ran away.

And I think if the dead could come back from their graves, the issue could be settled immediately.

Mr. MEZVINSKY. I want to thank you both. Mr. Chairman, I will defer any questions to my colleagues in the committee.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. I simply want to say, Mrs. Mullen and Father Smith that after a long day of testimony, this has been the most moving and the most eloquent and I do want to assure you that we will continue to try to legislate so that some other mother's son might come home and so that, as Father Smith put it, we will not any longer make a God out of our country.

Mr. KASTENMEIER. Mr. Smith?

Mr. SMITH. Thank you, Mr. Chairman. I too want to thank Mrs. Mullen and Father Smith for coming here today with such moving testimony. Thank you very much.

Mr. KASTENMEIER. The committee thanks you both for your testimony. This is an appropriate ending of our second day——

Mrs. MULLEN. Could I say one more thing? May I please?

Mr. KASTENMEIER. Yes.

Mrs. MULLEN. I was hoping someone would ask me about the inequities of the draft system. This is the basis of the whole thing. It has always been interesting to me in following the war—and I had been following it long before my son died—that not a Senator lost a son in Vietnam, not a Congressman lost a son in Vietnam, not a President lost a son in Vietnam, no Ambassador in Vietnam. Where did they come from, these citizen soldiers?

He came from the farm. He came from the ghetto. He came from the mountains of West Virginia.

I visited a lady in West Virginia whose son died with my son. They lived outside of Pittsburgh. It was 32 miles from the hill to his home. The boy probably had not even heard of Vietnam. When I visited with her, she told me three of those boys on the hill had died in 90 days.

A month later I was in Washington lobbying for 609 and I spent quite a lot of time trying to see Senator Hugh Scott. I was unable to see him, but I did visit at length with a great many of his aides, who were all very young and asked each and every one why they were not in the service and they quickly said they had CO's.

The boys on the top of the hill did not even know what the word CO meant. Do you know that in the State of Pennsylvania that if you were employed by a large industry, like Bethlehem Steel, Inland Steel, Alleghany, that if you were sweeping the floor, you had an automatic deferment?

I think these are the things that you must realize. If you are asking a handful of boys to give 2 more years to their country, how about the millions of people who knew somebody?

Thank you.

Mr. SMITH. Might I say something? I appreciate what you have said, but there were some Congressmen who lost sons in this war. There were a lot of Congressmen and a lot of Senators who had sons in the war. I happen to have three daughters. But there were a lot of people here in Congress who had personal experience of what the war meant.

The other thing I would like to say to you is this. I have to agree with you that in many respects the Selective Service law, the draft law, was inequitable and worked inequitably but it was I think probably maybe not the best that could be done, but it was an effort to set forth national priorities for the vet's interest and the welfare of the Nation.

I would say that I did serve on a draft board and we had some big industries and nobody got an automatic deferment in each case.

And I would say, as I did say, there were many inequities. There cannot help but be inequities when human beings are trying to run an imperfect human system. But I would say that the effort was made and the basis for what were discriminations—and there were discriminations—was based, as any imperfect system can only try to base it, on what the national welfare was, for instance, whether a man was a doctor and so on. The educational deferments, for instance, were based on the belief, whether it was right or wrong, that an educated person would better serve the welfare of the Nation.

So I just want to make some defense for the system, imperfect as it may have been.

Mr. KASTENMEIER. This concludes today's hearings. On Wednesday next at 10 o'clock in this room, 2141, we will have our third and final day of hearings on the question of amnesty. Until that time the committee stands adjourned.

[Whereupon at 4:35 o'clock p.m. the subcommittee recessed, to reconvene at 10 a.m., Wednesday, March 13, 1974.]

AMNESTY

WEDNESDAY, MARCH 13, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 2141, Rayburn House Office Building, Hon. Robert M. Kastenmeier, chairman, presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, Owens, Mezvinski, Railsback, Smith, Sandman, and Cohen.

Also present: Mr. William P. Dixon, counsel; and Mr. Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The subcommittee will come to order for this third and last day of hearings on the subject of amnesty and on various pieces of legislation dealing with the subject of amnesty.

We will try to complete our hearings before the morning is out. Some members will be called to other meetings, I believe. I am very pleased to greet—representing the Secretary of Defense—Lt. Gen. Leo E. Benade, who is the Deputy Assistant Secretary of Defense for Military Personnel Policy. You and your associates, whom you may care to identify, General Benade, are most welcome, and we look forward to your help in explaining the policy position of the Defense Department on this very crucial question.

TESTIMONY OF LT. GEN. LEO E. BENADE, U.S. ARMY, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY; ACCOMPANIED BY COL. VICTOR A. DeFIORI

General BENADE. Thank you very much, Mr. Chairman.

I am accompanied by Colonel DeFiori of my office.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you as a representative of the Department of Defense to address the subject of amnesty.

Chairman Kastenmeier's letter of February 20, 1974, indicates that this subcommittee is considering nine legislative items which involve a variety of proposals concerning present and former service members as well as civilian criminal offenders.

The issue of draft evaders and other civilian offenders is primarily within the purview of the Department of Justice and the Selective Service System. The primary interest of the Department of Defense is, of course, in the discussion about the impact that some possible form of relief for military offenders, principally deserters, will have on our ability to maintain a responsive fighting force.

As lawyers, the members of this committee will appreciate the definitional difficulties encountered in any consideration of the amnesty question. Consequently, with respect to military deserters, I would like to establish my understanding of the definitions of amnesty and pardon in this context and to review the history of the application of these concepts to military deserters.

Amnesty is a sovereign act of forgiveness for past misconduct, granted by the State to a person or class of persons. The grant may be conditioned upon the performance of an act or acts within a prescribed time. Amnesty usually has the effect of releasing a person or class of persons from criminal conviction, a record of conviction, and the remainder of any punishment. Sometimes it is effective before a trial has begun.

Pardon is a somewhat different concept as I understand it. Although pardon may release an individual from a penalty for a legal transgression, it does not alter the underlying criminal conviction. Pardon may be granted to any offender and is usually given after punishment for a crime has begun.

There have been no congressional grants of amnesty for military deserter's in our Nation's history.

President Thomas Jefferson acting under his constitutional power to grant reprieves and pardons for offenses against the United States used that power for the first time with regard to deserters in 1807. He granted pardons to individuals who had deserted from the Army during the 1795 Whiskey Rebellion, if they surrendered themselves within a period of 4 months.

Through the years there have been other Presidential proclamations issued, generally after a war, which granted pardons to deserters. However certain stipulations or conditions were prescribed, such as (1) deserters in confinement were to be released and returned to duty; (2) deserters at large, and under sentence of death, were to be discharged and never again enlisted in the service of the country; (3) deserters who returned were to forfeit all pay and allowances during their time of absence; (4) deserters who returned were to make up lost time by their absence and complete their terms of military obligation, and (5) deserters had to surrender themselves within a specified time after the proclamation.

There has been no general amnesty granted to individuals who deserted during World War I, World War II, or the Korean conflict.

Although a 1924 proclamation by President Calvin Coolidge is sometimes cited as a general amnesty granted to deserters, it only applied to those individuals who had deserted after the Armistice of World War I, and only restored their right to citizenship which had been forfeited upon their conviction. This proclamation was prompted as a result of a law enacted by Congress in 1912 which provided that deserters would forfeit their citizenship. A similar proclamation applying to peacetime deserters was issued by President Truman in 1952.

There have been some misunderstandings with respect to the function of the Truman Board which was appointed in 1946. This three-member board was appointed to consider amnesty for 15,805 convicted violators of the Selective Training and Service Act. That Board conducted an individual review of each case, and recommended individual

pardons in 1,523 cases. The Truman Board did not consider cases involving military deserters.

The position of the Department of Defense is not grounded in vengeance, vindictiveness or retribution, but rather in our conviction that any amnesty for deserters would be detrimental to the morale and discipline of the Armed Forces, and impact adversely on our national security.

One of the most complex aspects of current discussion on these subjects is that of the number of persons who might be affected by various proposals. There are, as of December 31, 1973, 28,661 deserters from the military services at large, including 2,099 who are known to be residing in foreign countries. In this context, an absentee is classified as a deserter for administrative purposes when he has been absent without leave for 30 consecutive days, or he has gone to a foreign country, or the facts and circumstances indicate that he may have committed the offense of desertion. Also to be considered are thousands of draft evaders, and those who have been prosecuted in recent years for desertion, related military offenses, or draft evasion.

There have, however, also been millions of young men and women who have served in the Armed Forces in recent years. Over 2½ million members of the Armed Forces served in Vietnam. During the period 1964–73, more than 1,800,000 men were inducted into the Armed Forces and hundreds of thousands more were motivated by the possibility of induction to volunteer for enlistment. Although some served reluctantly, the vast majority—over 95 percent—served honorably and well, and were discharged under honorable conditions. A great many Vietnam veterans are still serving in the Armed Forces. We must not forget the 46,000 who died, the 300,000 who were wounded, those who were captured, and those who are missing, and the many families involved. The Department of Defense appreciates and admires the gallantry, fortitude and courage of the men and women who accepted and honorably fulfilled their obligations and responsibilities to our country. Special tribute is due to those who suffered disabling wounds in combat, and yet greater tribute is due to those who gave their lives or who are missing in the service of their country.

Of the measures which this subcommittee is considering two (House Concurrent Resolutions 144 and 385) are consistent with the present views of the Department of Defense. They are identical resolutions which oppose pardon, reprieve, or amnesty for Selective Service Act violators and military deserters who fled to a foreign country.

The other measures, three of which are identical (H.R. 236, H.R. 3100, and H.R. 5195) are representative of a variety of amnesty proposals which range from complete and unconditional amnesty for all classes of offenders and for offenses sometimes only remotely related to war protests, to limited amnesty proposals conditioned on completion of military or alternate public service.

The Department of Defense supports the position of the administration which has consistently opposed a grant of amnesty. This position is based on a belief that the granting of amnesty as contemplated by the various bills before you would have a serious detrimental impact on the morale and discipline of our Armed Forces. In addition, it would establish an undesirable precedent which would dangerously impair the effectiveness of any future induction system and undermine the Uniform Code of Military Justice established by the Congress.

Consideration of amnesty now presumably might not include those whose offenses have been committed since the termination of United States participation in Vietnam hostilities, and therefore, might not necessarily encourage desertion in our present peacetime environment. However, the precedent for the future still would be troubling. Whether our military were manned wholly by volunteers or augmented by inductees in a future combat, service members would certainly be less hesitant to desert if they felt that they could do so with reasonable confidence that once the conflict was over they would be granted immunity from laws requiring prosecution and punishment.

The military deserter has a direct effect on the Armed Forces because he is not present to perform the job for which he was trained and his place must be filled by someone else. The deserter not only avoids his duty as a citizen, but he violates an oath taken upon entering service, and he violates the law. A grant of amnesty would undermine and could destroy the value and sanctity of these obligations, oaths, and laws. The Department of Defense agrees with the administration's view that the continued validity of these obligations, oaths, and laws is essential, and that any action, however limited or well-intentioned, which detracts from their efficacy is undesirable, and dangerous to the security of the Nation.

It is in the national interest and desirable from the Department's point of view to encourage the return of all unauthorized absentees as soon as possible. Substantial numbers of deserters, including some who fled to foreign countries, have already returned voluntarily, surrendered themselves and faced the consequences of their action. Contrary to the impression that some would foster, the military court martial system as well as our administrative discharge system has not acted in a capricious or arbitrary manner in these cases. There is, of course, a wide range of actions available to commanders, varying from immediate return to duty to trial and conviction. The reason for this divergency is sound and logical, and in the best traditions of the American judicial system. Each individual is treated as an individual, and his case is separately considered on its merits in accordance with due process.

It is important to keep the motives of military deserters in proper perspective. There is a connotation present, at least in the context of some amnesty proposals, that all or most military deserters absented themselves in order to avoid service in Vietnam. This, of course, is not true. Our data indicate that the great majority of individuals deserted for one or more of the reasons that soldiers have deserted throughout history—such as personal, family or financial reasons—and not to protest the war or to avoid hazardous duty in Vietnam.

In this regard, it might also be useful to note that the legitimate and sincere conscientious objector, including the objector whose beliefs did not crystalize until after his entry into active military service had, and still has, the alternative of claiming conscientious objector status and seeking discharge or noncombatant duty. His alternatives were not, and are not, limited to disobedience or desertion.

My remarks thus far have been directed at the military offender and I should like to cover one more point before moving briefly to the topic of the draft evader and the conditional amnesty proposals.

Some of the bills (H.R. 236, H.R. 3100, H.R. 5195) would provide for the grant of an upgraded discharge to any person who received a discharge other than honorable if the underlying acts which formed the basis for the discharge were motivated by the individual's opposition to United States involvement in Indochina. Aside from the virtually impossible task of proving motivation long after the fact, such a provision of law would engender an extremely complex and costly administrative burden.

Throughout the Department of Defense, every effort has been made to insure that the system of issuing characterized discharges includes procedural safeguards to guarantee that an individual's rights are adequately protected and that the character of a discharge accurately reflects the quality of an individual's service. Furthermore, there are, pursuant to Federal statute, Discharge Review Boards and Boards for the Correction of Military Records in each Military Department. The existing review board system has adequate authority to correct any error or to cure any injustice which may have occurred in an individual case. A suggestion to place discharge review authority in an Amnesty Commission or some other special body concerned only with the review of Vietnam era discharges is inequitable with respect to veterans of former and future periods.

Turning to the draft evaders, I feel compelled to mention the obvious. For every individual who chose to evade or violate provisions of U.S. law requiring service to our country, someone else was called to take his place—and some of those, no doubt, also were just as reluctant to participate in a war. But they served their country. Some suffered temporarily; some suffer permanently; and some died.

The Department agrees with the administration's view that amnesty for draft evaders is not equitable. The alternatives were clear at the time a choice was made and an individual should be required to face the consequences of the choice he made. As in the case of deserters, the Department of Defense is concerned also about the ability of the Selective Service System to function effectively in any future conflict situation which might require induction. Amnesty for draft evaders, either conditional or unconditional, could establish a dangerous precedent which could result in encouraging future draft violations in the expectation of subsequent exoneration.

The Department is also opposed to the proposals which would provide amnesty on the condition that the draft evader perform some alternate form of service or now serve a period in the Armed Forces. Those who were inducted and those whose enlistments were draft motivated might well have preferred the opportunity to serve in a civilian capacity in a public service activity, but that alternative was not available to them under the laws they obeyed.

It is also our view that substitution of military service in lieu of prosecution and possible punishment for a criminal violation is unacceptable. Such a practice would equate military service with penal servitude and this is contrary to the history and tradition of our country which holds honorable military service to be a citizen's duty and privilege. The Department of Defense and the Military Services have long sought to terminate the objectionable practice of some criminal courts and prosecutors which has permitted alleged criminals to escape prosecution by enlisting under duress. Such enlistments are con-

trary to service regulations and are not knowingly allowed by the military departments. Certainly they are detrimental to the Nation's current desire to build a professional volunteer force of high caliber and high motivation.

It is conceivable that some deserters and draft evaders might elect an amnesty option conditioned on a period of military service. Deserters, however, already have an obligation which remains unfulfilled, and the Department of Defense does not want or need draft evaders in its ranks. In many cases, the past actions or such persons strongly indicate that their potential for useful service is limited and that their reliability and motivation are extremely suspect. Their instability in this regard, and in fact, their mere presence in the ranks would have an adverse effect on the morale and dedication of others serving with them. They might well become a safety risk to themselves and others and could jeopardize the ability of the units in which they served to complete their missions successfully.

The Department shares the administration view that it would be contrary to the security interests of this country to establish a precedent which recognized selective objection to participation in a particular national emergency, regardless of the specific motivation. The unconditional amnesty proposals could have this effect. It would be equally unwise to permit an individual to pick and choose either the conditions or the time of his service in situations which require legal induction. That, too, could be the result of the conditional amnesty proposals.

Mr. Chairman, the Department of Defense welcomes thorough and deliberate consideration of all the complex issues involved in the proposals before the subcommittee. We recognize that both the administration and the Congress wish to support a position consistent both with the demands of national security and with the requirements of our Nation's historic judicial processes recognizing the rights of individuals.

Gentlemen, that concludes my prepared remarks. I will be pleased to attempt to answer your questions.

Mr. KASTENMEIER. Thank you, General Benade.

When you mention in terms of discussion of legislation that the two House concurrent resolutions were consistent with the views of the Defense Department, I wonder are you aware that the Justice Department does not support those resolutions saying that they might be troublesome, they may have some constitutional infirmity?

General BENADE. If they are subject to some constitutional infirmity, Mr. Chairman, then no, I am not qualified really to speak to the constitutional deficiencies, if any, in the bills. The point that I sought to make was simply that the concept of opposition to amnesty, as I understand it, is consistent with the Defense Department and administration position.

Mr. KASTENMEIER. I think they take the position, and they may be wrong, of course, when they say the Congress ought not act on the question, even in the context of these resolutions.

General BENADE. I see.

Mr. KASTENMEIER. You mentioned an undesirable precedent that might be set if amnesty were granted deserters. You briefly go through the history of amnesty in this country and certain forms of amnesty that have been granted here and abroad. Do you have any cases in

mind where amnesty has, in fact, undercut morale here or abroad in terms of the armed forces in a country?

General BENADE. No, sir, I do not have a specific country in mind. I think it is, however, Mr. Chairman, a self-evident proposition. I think I am personally troubled most by the fact that from the discussions that I have read, and I appreciate the opposing views on each side of this question, there is, as I indicated in my statement, the connotation that all deserters deserted because of moral scruples against the war. Although the data that we have, Mr. Chairman, are necessarily limited, I think it would be useful to consider, for example, such data as we do have which indicate so far the reasons for desertion. The best example is through the period July 1, 1966 to December 31, 1973, we had a total of 4,194 deserters who went to foreign countries. Now, of that number, 1,413 have already returned to military control. Some have been discharged in absentia, 662 to be exact, and in each case were men who were aliens and who returned to the country of which they were a citizen. They were, therefore, discharged in absentia after they had been gone more than a year.

As I indicated in my statement, 2,099 are at large in foreign countries. Now, I think it is significant, Mr. Chairman, that of those who did go to foreign countries we tried to determine the reasons for their desertion, and going to the foreign countries. In about 45 percent of the cases there was no evidence that could be found that the individual, prior to his desertion, had expressed scruples or concern or objection to the U.S. involvement in Vietnam. So, it is an unknown. That factor may have been there, but there is no way to establish it.

Now, almost 10 percent, 9.6 percent to be precise, were deserters who had escaped from confinement and who were under charges for other offenses, and who deserted rather than face trial or punishment; 4.4 percent deserted because of family, financial, or personal reasons; 5 percent deserted because of an inability to adjust to military life; 2.6 percent claimed conscientious objector or pacifist belief; eight-tenths of 1 percent were living with an alien spouse; one-half of 1 percent admitted a fear of being killed; and only 3.6 percent had established objections to the Vietnam war. It is this kind of thing that I think makes it troublesome, Mr. Chairman, and I think we all have to be aware of it. You cannot generalize on this subject and feel that all deserters deserted for the single reason of moral scruples.

Mr. KASTENMEIER. Yes, of course. We understand that not all deserters are antiwar or motivated by antiwar views solely or exclusively. And, in fact, some perhaps not at all. But, I am interested in the precision of your figures. Actually you are relying on what field commanders report; I take it?

General BENADE. We are relying on investigations that were conducted in each and every case, Mr. Chairman. We have some rather detailed requirements and in the case of individuals who desert to foreign countries an exhaustive investigation is conducted. It includes review of the immediate circumstances, interviews with the man's contemporaries, his fellow soldiers, interviews with family and friends, and the collection of information from any source which might help shed light on the reasons why the individual deserted to a foreign country.

Mr. KASTENMEIER. And do I understand your study disclosed that less than 5 percent of all deserters were motivated by antiwar views? Is that what it shows?

General BENADE. That is what the data indicate, yes, sir, Mr. Chairman.

Mr. KASTENMEIER. And 95 percent were motivated for other reasons?

General BENADE. No, sir, I did not want to say that. As I indicated at the start, in about 45 percent of the cases we were unable to establish any reason whatsoever. There was no prior indication by the individual, for example, to his fellow soldiers, or in communications to his family or to friends that he was going to desert for a particular reason. There was just no indication. But, of those, of the remaining 50-some-odd percent, the breakdown is essentially along the lines that I just gave to you, sir.

Mr. KASTENMEIER. I see. Many of them, I take it were, a very large percentage, you just were not able to ascertain what motivated their desertion?

General BENADE. Yes, sir. About 46 percent we are not able to determine the reasons.

Mr. KASTENMEIER. One implicit inconsistency in your testimony is suggested by the fact that no amnesty was given to those who deserted during World War I, World War II, the Korean war, so there was no precedent set, you might argue, to encourage desertion during the Vietnam conflict. And yet the rate of desertion during Vietnam was triple, I understand, the highest rate even during the Korean war, and much higher than any of the other conflicts. So that our failure to grant amnesty for a prior war did not have the effect of discouraging desertion in Vietnam, presumably.

General BENADE. I think that is a very important point, Mr. Chairman, and I would like to address it in detail. I think it is very important to put in perspective what the desertion rates are, and what they were during the Vietnam war and how they compared with past periods. If you will bear with me a moment.

Mr. KASTENMEIER. Yes. I would be very surprised, I might say, if the thrust of your statistics is to suggest that they were comparable or less.

General BENADE. They certainly are not greater, Mr. Chairman. I think there is a tendency to think that the desertions during the Vietnam war were out of sight in comparison to any past period in history. Not at all. We do attribute some of the increased rate, of course, to the increased incidence of drug abuse, and so that contributed a great deal to it. We also think that the prolonged nature of the Vietnam war, of course, was a contributing factor also as compared to previous conflicts. But, over a 10-year period, as I say——

Mr. KASTENMEIER. The statistics that I have is that the Pentagon reported over 500,000 cases of desertion during Vietnam.

General BENADE. No, sir. Over that period that would be true, but I think you would find in the 10-year period preceding that that we also had about the same rate, amazingly close. [Subsequently, General Benade corrected this statement to read in part: but I think you would find in the period preceding that including World War II that we also had about the same rate, amazingly close.] In fact, I will give the precise statistics here and provide them for the record.

Mr. KASTENMEIER. Maybe we can return to those statistics. We can accept the thrust of what you say, and then we will accept the statistics a bit later.

General BENADE. I will provide them for the record.

[Subsequently, the following statistics were supplied for the record:]

DEPARTMENT OF DEFENSE

DESERTION RATE (UNAUTHORIZED ABSENCE OF 30 DAYS OR MORE)

	Army	Navy	Marine Corps	Air Force
World War II, calendar year—				
1942	[1]	5.5	[2] 7.3	[3]
1943	[1]	3.1	[4] 8.8	[3]
1944	63.0	3.0	[4] 6.9	[3]
1945	45.2	3.5	[4] 5.4	[3]
Korea, fiscal year—				
1951	[5] 14.3	3.1	10.1	[1]
1952	22.0	6.2	19.7	[1]
1953	22.3	8.7	29.6	[1]
1954	15.7	6.9	[6] 2.2	[1]
Vietnam, fiscal year—				
1965	15.7	6.7	18.8	0.39
1966	14.7	9.1	16.1	.35
1967	21.4	9.7	26.8	.42
1968	29.1	8.5	30.7	.44
1969	42.4	7.34	40.2	.63
1970	52.3	9.9	59.6	.80
1971	73.5	11.1	56.2	1.5
1972	62.0	8.8	65.3	2.8
1973	52.0	13.6	63.2	2.2
Fiscal year 1974 [7]	[8] 20.8	10.0	44.0	1.3

[1] Data not available.
[2] Dec. 1, 1941, to June 30, 1942.
[3] Air Force did not become a separate service until 1947.
[4] Fiscal year.
[5] Calendar year.
[6] July 1953.
[7] 1st half fiscal year 1974 (Dec. 31, 1973).
[8] 5 mo. (e.g., as of Nov. 30, 1973).

Discussion: Desertion—The term used herein has no legal significance. When an individual has been absent without authority for 30 days or more, he is administratively classified as a deserter. Only after an individual is convicted of the charge of desertion can the term "deserter" be applied in the full legal sense. Desertion rate—Rate per 1,000 average enlisted monthly end strength.

Note: Calendar year—Jan. 1 to Dec. 31. Fiscal year—July 1 to June 30.

DEPARTMENT OF DEFENSE

ABSENTEE INCIDENT RATE (ABSENTEE INCIDENTS OF LESS THAN 30 DAYS)

	Army	Navy	Marine Corps	Air Force
World War II, calendar year—				
1942	[1]	[1]	[1]	[2]
1943	[1]	[1]	[1]	[2]
1944	[1]	[1]	[1]	[2]
1945	[1]	[1]	[1]	[2]
Korea, fiscal year—				
1951	[1]	28.4	[1]	[1]
1952	181.0	31.9	[1]	62.0
1953	158.0	36.3	[1]	58.44
1954	115.3	37.6	[1]	38.32
Vietnam, fiscal year—				
1965	60.1	26.8	[1]	2.9
1966	57.2	29.2	[1]	3.3
1967	78.0	22.4	[1]	3.6
1968	89.7	14.4	[1]	3.6
1969	112.3	13.54	[1]	4.4
1970	132.5	17.5	174.3	5.9
1971	176.9	19.0	166.6	9.4
1972	166.4	18.3	170.0	17.2
1973	159.0	21.7	234.3	16.1
Fiscal year 1974 [3]	[4] 62.9	10.0	143.0	9.0

[1] Data not available.
[2] Air Force did not become a separate service until 1947.
[3] 1st half fiscal year 1974 (Dec. 31, 1973).
[4] 5 mos (e.g., as of Nov. 30, 1973).

Discussion: Absentee incident rate—Rate per 1,000 average enlisted monthly end strength.

Note: Calendar year—Jan. 1 to Dec. 31, fiscal year—July 1 to June 30.

Mr. KASTENMEIER. I have one other question before I yield to my colleagues, and that is pertaining to classifications of discharge. One of the criticisms arises because there was discrimination and veterans were earmarked by virtue of the classification system on their discharge certificates. Many people seem to be unaware that there is a coding system. I am not clear on when it was first inaugurated or why. What purpose does it serve?

General BENADE. Mr. Chairman, we have had characterization of discharges for many, many years in the Armed Forces. In fact, it has its origin in Revolutionary War days, and the system of characterizing the type of discharge essentially along the lines as is now done began about 1841. When the individual is issued his discharge certificate, he is, at the same time, furnished a report of separation, as it is called, which is identified as a Department of Defense Form 214. That form contains a summary of his military service. It reflects the training that he was given, schools that he has completed, skills in which he was found qualified, awards and decorations which he earned, other relevant data, and the reason for discharge.

Now, it used to be, up until about 1952, that the reason for discharge was stated in narrative form. Then in order to try to mitigate any adverse effect to people who were being discharged for less than honorable service, so-called SPN numbers, which is an abbreviation for separation program number, replaced the narrative. Thereafter you had to refer to a regulation to see what the number was, and the number stood for a certain reason for discharge, expiration of term of service, convenience of the Government, hardship, discharged to reenlist, and so on.

Now, in the great majority of cases, in fact 95 percent essentially, people are discharged from the service with honorable discharges. The problem arises with that small percentage who are discharged from the service for reasons less than honorable, and the SPN number is the reason why he was discharged from the service. But, this concept of reflecting the man's service and providing him with the discharge which reflects the character of service and the reason for discharge is practically as old as the Armed Forces themselves, sir.

Mr. KASTENMEIER. I realize that the so-called medical discharge or general discharge and so forth have a long history. But, the coding system which indicates an individual may be difficult to control, or a homosexual or something else, I was not aware of. This is of recent vintage, is it not, the coding system?

General BENADE. Yes, sir. It began about 1952, sir. It was in 1972 that the last of the narrative descriptions were used, but actually the coding system had been in use for some time before that. But, I emphasize, Mr. Chairman, either you have a number or you have the reason stated explicitly in words. The result is the same. But use of the number had its sole purpose in an attempt to help the individual. It is important to keep in mind that you have two document involved. One is a discharge certficate itself. That does not have anything on it with respect to numbers or reason for discharge. Then there is another form, the Department of Defense Form 214, which reflects such things as the training the man received, the skills, schools attended, and the reason for the discharge.

Now, prior to the use of this code number, the specific reason for discharge was set out. If the man was being released from the service because of unsuitability or misconduct or whatever, it was stated in words right on the Department of Defense Form 214. At least by having the code number, you helped to protect the privacy of the individual.

Mr. KASTENMEIR. Whether the code number or not, is that generally available to prospective employers and others?

General BENADE. No, sir. No, sir, it is not. In the first place, it is up to the man as to whether or not he wants to present that form to a prospective employer. That form has only the code number on it, as I say, with respect to the reason for discharge. The man himself knows the reason for his discharge. He can either tell his employer or not tell him, as he sees fit, or he need not present the form if he does not want to do so. The military services will not release to an employer the reason for the man's discharge unless the individual himself requests that that information be made available.

Mr. KASTENMEIER. Thank you. I yield to the gentleman from California, Mr. Danielson.

Mr. DANIELSON. At some point in your testimony you commented that one consideration that we must keep in mind is that if deserters return to military control, and commence or embark upon the completion of their obligation, this sometimes has an adverse effect upon the morale of their comrades, the other members of their units. Is that supported by facts based upon those who have returned to service after having deserted during the Vietnam conflict?

General BENADE. Sir, if I might clarify, I believe you will find I was referring to draft evaders, because in the case of deserters, when deserters return to military control, each case is then handled on an individual basis. Some have been freed of all charges and returned to duty. Others have been given confinement for short periods. Others for longer periods. Confinement generally depends on the length of the absence and the circumstances. There are many times mitigating circumstances. The confinement may be as little as 6 months or less. Other cases have been given 6 or 12 months. Other cases 12 or 18, and so on. But, many of those men have been returned to duty. My remarks were not aimed at the deserters as such.

Mr. DANIELSON. All right. The man has now returned to duty. What impact or what effect has this had upon the morale of his colleagues, his comrades, the other members of his unit?

General BENADE. Those who have been returned to duty Mr. Danielson, and whose character of service indicates that they desire to be rehabilitated, and then serve faithfully, are no problem. The problem is with those who do not wish to be rehabilitated, who do not wish to continue to serve. Most of those individuals would be given a discharge from the service.

Mr. DANIELSON. I am inferring from what you state, that there is not a morale problem among the other members of the forces which is occasioned by the return to service of people who have deserted or who have at one time been evaders?

General BENADE. I think the important distinction, sir, is that of those who have returned voluntarily to military control, and who

have been tried, if that was indicated, or who were given administrative punishment, must be distinguished from individuals who return to service not of their own volition and who are not continuing in service because they wish to be in service and wish to be rehabilitated. There is quite a difference.

Mr. DANIELSON. Are there some in this latter category? Are there some such military personnel, the ones you just described?

General BENADE. I can only repeat what I said before, sir, that of those who have returned to military control, we have some who have been retained in service. They have been rehabilitated. They desire to continue.

Mr. DANIELSON. All right. Thinking of that category.

General BENADE. All right, sir.

Mr. DANIELSON. What adverse effect, if any, has their return to service had upon the units to which they were assigned, upon the personnel with whom they serve?

General BENADE. Of those who have been retained, I would say none. But the majority have been released after they have served whatever sentence was imposed.

Mr. DANIELSON. I think then the proper inference is those who have been returned have had no adverse effect on morale.

General BENADE. That is right, sir.

Mr. DANIELSON. On pages 3 and 4 of your statement, you state, commencing at the bottom of page 3 where you are referring to similar proclamations of amnesty applying to peacetime deserters issued by President Truman in 1952, and then at the top of page 4, you refer to the board President Truman appointed in 1946. Those are two separate categories of activities, are they not?

General BENADE. Yes. Two separate.

Mr. DANIELSON. They are not one and the same?

General BENADE. No, sir, two separate.

Mr. DANIELSON. Thank you. That is all of the questions I have.

Mr. KASTENMEIER. The gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. General Benade, how many people claimed conscientious objector status in the Vietnam conflict? I noticed, and let me refer you to page 9 of your statement, where you say,

> In this regard, it might also be useful to note that the legitimate and sincere conscientious objector, including the objector whose beliefs did not crystalize until after his entry into active military service, had and still has the alternative of claiming conscientious objector status and seeking discharge or noncombatant duty.

I am wondering if you can give us the figures on that. How many people after induction into the service actually claimed conscientious objector status, and what happened to them? I am interested in what happened to them.

General BENADE. Yes, sir. I can provide that, and I will be glad to provide for the record details for each year from 1965 into 1973. And I will not try to read all of those figures to you right now, but I will be happy to give you some examples of illustrative years.

Going back to 1965, which is the first year here, 669 such applications were received.

Mr. RAILSBACK. How many? I'm sorry, I did not hear your comment.

General BENADE. Six hundred and sixty-nine applications were submitted from men in service for conscientious objector status. Of those, 335 were approved for noncombatant assignments; 109 were approved for release from service; 225 were disapproved. So the percentage of approval in that year was 66.4 percent.

[Subsequently, the following table on conscientious objectors was furnished:]

DEPARTMENT OF DEFENSE: CONSCIENTIOUS OBJECTORS—STATUS OF IN-SERVICE APPLICATIONS FOR DISCHARGE OR NONCOMBATANT SERVICE

	Total applications received	1-A-0 approvals (non-combatant)	1-0 approvals (discharge)	Number disapproved	Percent approvals of applications
Calendar year:					
1965 [1]	669	335	109	225	66.4
1966 [1] [2]	383	31	84	268	30.0
1967 [2]	928	162	71	596	28.2
1968	1,387	555	169	663	52.2
1969	2,556	657	438	1,461	42.8
1970	3,196	697	937	1,562	51.1
1971	4,381	781	1,984	1,616	63.1
1972	2,673	222	1,844	607	77.3
1973 [3]	932	112	645	175	81.2

[1] 1965 data includes Army 1-A-0 applications for February 1964-September 1966 and Marine Corps 1-A-0 and 1-0 applications for March 1965-December 1966.
[2] Applications from Army Reserves not on active duty reported for fiscal year in lieu of calendar year.
[3] 1973 data represents first half of calendar year 1973 and does not include pending applications.

Mr. RAILSBACK. You mentioned 109 were released from service. What kind of a discharge would they get?

General BENADE. They would have gotten a discharge under honorable conditions based on the character of their service. The certificate would be either an honorable or general discharge.

Mr. RAILSBACK. Could you get us those figures as well, in other words tell us what kind of discharges they got?

General BENADE. We can try, sir. I am not sure, because in each case we will have to go back and do an individual records search. That is the only way we can really know.

[Subsequently the following was supplied:]

The Services have been requested to research their records and provide representative statistics relative to the type of discharge certificate (honorable or general) provided to persons discharged as conscientious objectors. These will be provided to the Committee when compiled.

Mr. RAILSBACK. What might be helpful, instead of going back over all of the years, if you could take, say that particular year, I think it would help us to get a feel of what happened to those people that were simply released.

May I ask in respect to the coding, which I frankly did not have any knowledge of until I heard somebody testify the other day, first of all, let me just ask you this: Do you have the SPN numbers on honorable discharges as well as dishonorable?

General BENADE. Every discharge. Every man who is discharged receives the form, the DD 214, on which there is a reason for the discharge.

Mr. RAILSBACK. I have a great deal of difficulty understanding what purpose that number serves, particularly on somebody who has gotten an honorable discharge. What purpose does that number serve?

General BENADE. Well, in the case of the honorable discharge, Mr. Railsback, it serves as immediate reference and identification for the individual as to the reason for his discharge. Now, obviously the man——

Mr. RAILSBACK. Even if he has been given an honorable discharge?

General BENADE. Yes. Well, if he has an honorable discharge, there is no problem. That has never been a problem.

Mr. RAILSBACK. Well, what future use, what future use is made of that number? What help can that be to the service, sir, or how does it help?

General BENADE. Well, it certainly continues for statistical purposes and analysis purposes within the Department of Defense. It serves a worthwhile purpose. Now, it can be left off. Understand me, sir. It could be left off in the case of individuals who have an honorable discharge. But the problem, you see, is how do you recognize honorable service and distinguish it from service which is not honorable, if you put the reason only on those who receive a less than honorable discharge?

Mr. RAILSBACK. Can I suggest to you that at this particular time, those of us that have been involved in penal reform are concerned about the fact that some States have licensing laws, for instance, that prevent somebody that has been an ex-offender from getting a job. And we are concerned that this may compound that individual's problem and actually provoke him into having to commit another offense in order to make a living. My feeling is I question whether or not only in the case of honorable discharges, I really question whether that could possibly have any kind of a beneficial effect as far as that particular individual is concerned, or as far as the service is concerned, particularly where he may be asked to provide his DD 214. Is it not the 214 form? In other words, I just honestly have a great deal of difficulty with this. I can see where maybe the service, somewhere in the service files that would never be made available to anybody else the service could have a use for that. But I am not even sure about that. But anyway, I do not see where it could have any beneficial effect at all as far as that individual is concerned, and particularly in a case where he has been given an honorable discharge. It just seems to me that if some employers, as has been alleged, really can decode that, and use that in determining whether to hire an individual that may have had some problems, I just think that it really is a most improper purpose for it. And you indicated that you think we could do away with it.

General BENADE. No. I am saying, Mr. Railsback, that we have not had problems, and I doubt if a former serviceman who has received an honorable discharge, has a problem based on an honorable discharge. There are some cases, of course, of an individual who can receive an honorable discharge but for an unfavorable reason. For example, an individual who is being discharged for drug abuse. Now, he may still receive an honorable discharge, but he is being discharged for drug abuse. Now, that is a fact, and that is the reason why he was discharged.

Mr. RAILSBACK. Why put that on his record, though, if it is not to be given to an employer? I do not see any purpose. The way I understand your regulations are that an individual need not, or you assume that he need not provide that to a future employer. And there are regulations that really are supposed to protect from the employer being able to get that information. But, as a practical matter, then, why have it on there at all?

General BENADE. Well, perhaps I can turn it around, sir. I do not want to be contentious about it. This is a problem we have struggled with for several years, particularly because of the increasing concern of some Members of Congress.

Now, I put it to you, sir, our problem is that we want to recognize the fact that we think the man who serves faithfully and honorably deserves a public testimonial to that effect. Now, so long as we do that, we are anxious to support the overwhelming majority of people who do serve honorably and well, and whose discharge reason is a favorable one. We have not been able to devise a way to take care of the 5 percent who are discharged under other than honorable conditions, and at the same time not degrade the character of the discharge and the reason. Most men are proud of the reason they are discharged. Their certificate says that they are discharged because they completed their term of service honorably and faithfully, and they want that.

Mr. RAILSBACK. I understand that, but I think really it is a contradiction to have in the regulations that this information is not supposed to be made available to anyone and have employers who know the code.

General BENADE. If you will forgive me, sir, it is important to be accurate now. We do not say that it is not supposed to be shown to anyone else. We give this record to the man. Now, what he does with it thereafter is his own determination.

Mr. RAILSBACK. I really doubt, General, whether a lot of men even know about this SPN number, but maybe some employers do.

General BENADE. If you will forgive me again, sir, every man that leaves the service is told the reason for his separation. Every man that leaves the service.

Mr. RAILSBACK. I remember getting an honorable discharge, but I sure do not know if I had a SPN number or not.

General BENADE. Well, I do not know when you were in the service, sir, but I am sure you were told the reason for your separation.

Mr. RAILSBACK. I was given an honorable discharge, but as I understood it, there can be some people who have been honorably discharged that have a SPN number that is kind of derogatory.

General BENADE. It is possible. I used an illustration of a man who has been given an honorable discharge but who is being released from the service because of drug abuse. Now, he is told that reason.

Mr. RAILSBACK. Is the individual who is given a derogatory SPN number given any right to question that number?

General BENADE. Yes, sir. Yes, sir. There is a very elaborate procedure. If the committee desires me to go into detail, I will be glad to, or I will be glad to furnish for the record the regulations which control it.

Mr. RAILSBACK. Well, that is all I have, Mr. Chairman.

Mr. KASTENMEIER. Yes. Just to follow up very briefly on that, because it seems to me we are dealing with two different things here, you say that the man is told why he is being discharged, but you did not say that he is told that he better watch out for his SPN number because it could be anything from unfitness, inaptitude, shirking, and lying, or uncleanliness, bedwetting, or unsuitability. It could mean those things and many other things. Does he in every circumstance know that that number discloses that?

General BENADE. Sir, I believe that he does. But I certainly—the man is told his reason, and he is told it is going to be on this record of his service. It is not on his discharge certificate, it is on the record of service. Now, as I said, before we used the numbers, the reason was there in words.

Mr. KASTENMEIER. I agree, I think, with the implication of Congressman Railsback's questioning, and that is that these numbers serve no public purpose that I can see, because again there is a separation. You suggest that many desire that it be known that they have served honorably. That is very well that they have an honorable discharge. Others do not. They may have a general discharge or a medical discharge, but that in and of itself ought to be enough. Why the spelling out of the personal characteristics of this in coded form of some sort? I think that is the point we are making, and while it comes up in the context of forgetting or forgiving in these hearings, in terms of stigmatizing individuals in connection with past service, I think it is a very good question.

I yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

General, 2 years ago you testified in the Senate that "It is wise that consideration of amnesty for deserters be deferred until some future time until the requirements of Vietnam have passed." And when I reviewed that a few days ago I thought that perhaps now that the requirements of Vietnam have passed, you would say that the time has come to consider amnesty. Would you want to comment on that?

General BENADE. Yes; I did so state in testimony before the Senate subcommittee on this subject sir. At that time, however, I did not, certainly, mean to imply that the Department of Defense favored amnesty or the other measures that I have addressed this morning.

Mr. DRINAN. What did you mean? You said that, "When the requirements of Vietnam are passed, it would be wise to have consideration," or at least that consideration be passed upon or deferred until that time. I assume that that time has come. The requirements of Vietnam have passed.

General BENADE. Yes, sir. The requirements of Vietnam have passed, and I think now is the time perhaps for the Congress to meet this problem head on and to consider both sides of it. In my view several years ago, sir, the emotions still ran high, and while we had men in combat and men still dying, it just seemed inappropriate to be discussing amnesty or the pros and cons of it.

Mr. DRINAN. Would you change your position now if the President changed his position?

General BENADE. The view that I have expressed to you is my personal opinion, and it is not colored by any stand that the President has taken, sir.

Mr. DRINAN. Would you answer the question? Would you change that position if the President changed his position?

General BENADE. No, sir, because what I just expressed was a personal position, and it is not affected by what the President thinks.

Mr. DRINAN. Has the Pentagon ever acquiesced in amnesty, for example, at the time of Truman's Review Board? Did the military say maybe it is a good idea, or did they oppose it openly or nonopenly?

General BENADE. I cannot state of my own personal knowledge, sir. My impression is that the Defense Department at that time did not object to the establishment of the procedure President Truman set up.

Mr. DRINAN. To repeat my question, in another form, therefore, can we expect that the Pentagon will not oppose some consideration of amnesty if the President proposed?

General BENADE. Would you repeat that, sir?

Mr. DRINAN. If the President changed his position, can we assume that the Pentagon will also change their position?

General BENADE. Yes, sir; I think so. The President is the Commander in Chief and——

Mr. DRINAN. Thank you very much.

Going back to the code numbers, General, I have seen these code numbers in Red Cross manuals, and in the Service Manuals of the Veterans of Foreign Wars. How can you say that this is a confidential matter when any employer can find out exactly what these numbers mean?

General BENADE. It is for that reason, sir, that we have again changed the lists. They are labeled "For Official Use Only," and there will be an entirely new list established July 1, of this year.

Mr. DRINAN. And what type of security is there guaranteed that these same individuals will not get that? I assume that this code is given to the person leaving, is it? If he is told why he is being dismissed, then he must get the code, right?

General BENADE. He can see the code number.

Mr. DRINAN. He goes away with the sheet of paper with the next list of numbers?

General BENADE. No. Not the total list, sir. He has only his own discharge certificate. He has been told the reason for his separation. When he looks at the form in that section which says reason for separation, it will have a number, be it 115, or 123, and he knows the reason.

Mr. DRINAN. General, I have found that you come here really without the key facts. You make a case that anybody in service can, in fact, apply for conscientious objector status, and then when you are asked for the key facts on how many applied and how many were granted, you say that you can furnish them, but really, this is the key question. And I do not want to go back and have you recite those, because I want to study everything that you will give to us. But, it is my experience, and it is considerable, that in service CO status is very difficult to obtain. Virtually no one acquires it or even applies for it. It seems to me that you vastly overstate your case when you say that they can simply routinely go and request a CO status. That I do not think is really true.

General BENADE. Mr. Drinan, may I interject at that point?

Mr. DRINAN. Yes.

General BENADE. I think you misunderstood my answer, sir. I have the figures and the data right here, and I said I would be happy to furnish them completely for the record rather than read them, so I would be happy to go right now through each year.

Now, let me say one other thing, sir. I do not mean to imply that obtaining conscientious objector status is easy. It is not easy. And I did not mean to imply that. But, the tests and the procedures that are followed in the military services are consistent with court decisions on the subject. The services utilize the tests that have been laid down by the courts and the procedures followed by the Selective Service System itself. I believe there has been a conscientious effort to adhere to the letter and the spirit of the law and regulations on that, sir.

Mr. DRINAN. The way I read your paper on page 9, you do make it easy, and you say that—

> In this regard, it might also be useful to note that the legitimate and sincere conscientious objector, including the objector whose beliefs did not crystallize until his entry into active military service had, and still has, the alternative of claiming conscientious objector status and seeking discharge or noncombatant duty. His alternatives were not, and are not, limited to disobedience or desertion.

You do make this is a legitimate, easily available alternative. And in reality, and I think you have practically conceded that this is very difficult, very difficult, and really impossible in most cases, because you suggested they do not comply with the law, and the law is very, very narrow.

General BENADE. Mr. Drinan, may I just recite for you since you have raised that, in 1969 and 1968, let us take those 2 years, because they were practically the height of our Vietnam involvement when our casualties were running at their highest. I would like to give you the figures for those years, sir.

In 1968, we received 1,387 applications for conscientious objector status. 555 were approved for noncombatant duty. 169 were approved for discharge. 663 were disapproved, so that the percentage of those approved was 52 percent.

In 1970, there were 3,196 applications: 697 were approved for noncombatant duty; 937 were approved for discharge; 1,562 were disapproved. The percentage of approval was 51.1 percent.

Now, it might be, sir, that you feel the percentage of approval might be a great deal higher.

Mr. DRINAN. General, that is not my difficulty. My difficulty is the infinitestimal number that apply. In 1968 there were 500,000 men alone in Vietnam, and many more in non-Vietnam posts, and only 1,387 even applied. Now, I know how difficult it is even to get the forms, and to have these people go through, and I would be interested to see how many officers were among the 1,387, and how many black people were among them.

On another point, General, it seems to me that your argument cuts both ways. You say that far less than 5 percent of all people in the military ever thought of applying for conscientious objector status. If this is so, and you gave it as a figure of 2.6 percent who had applied or thought about it, why are you so apprehensive that this small group if, in fact, they did get some form of amnesty—that this small group would disrupt the Army, that it would be dangerous for national security? It would have all of these horrendous con-

sequences to the security of the Nation that you pose here. Does not your argument cut both ways? You are telling us there are only a few involved. If there are only a few why are you so concerned about it?

General BENADE. I am concerned, Mr. Drinan, because the principle is what is important.

Mr. DRINAN. What is the principle?

General BENADE. The principle, sir, is what I tried hard to make clear in my statement. The number of 28,000 men is not, in and of itself, a threat to this Nation's security. What does represent a threat is a precedent that in the future men can desert the Armed Forces, particularly in times of combat, with the expectation that they can be exonerated from that offense at the cessation of hostilities. That is our concern, sir.

Mr. DRINAN. Going back to the point raised by the chairman, you gave no satisfactory explanation of that. The number of deserters through the Vietnam era was high, according to the way I read it, and you were going to rebut that, but we did not get back to those statistics. Now, of the 28,000 deserters, you say that 2,099 of the deserters are at large in foreign countries. Well, if you have heard information on that, where are the other 26,000?

General BENADE. We do not know, sir. The number that we have identified in foreign countries are those where we have pretty concrete evidence that they are, in fact, residing in the foreign countries. There might be more. It has been our experience, sir, that it is difficult for an individual to reside for any great length of time in a country of which he is not a citizen. Usually the individual will come to the attention of the foreign government because of the need to apply for work permits, or to obtain employment, or he will come to the attention of the American Embassy, or the Consulate officials.

Mr. DRINAN. Do you have law enforcement officials, civilian or military, that track the activities of these individuals if, in fact, they return to the United States? For example, we had testimony here the other day that a boy returned from Canada for the funeral of his father, and that he was apprehended at that time. Does the military work in collaboration with civilian law enforcement officials to track down these people?

General BENADE. Yes, sir. From the time that an individual is classified as a deserter, there is a notification to civilian law enforcement authorities, including the Federal Bureau of Investigation.

Mr. DRINAN. Are those who go to a foreign land treated more harshly than those who remain in the United States?

General BENADE. Not to my knowledge, sir. As I indicated each case is considered on an individual basis when they return to military control.

Mr. DRINAN. That statement lacks some credibility in view of what Senator Taft revealed here the other day, the complete disparity in the criminal sanctions given to various people, that in various Federal courts the discrepancy is just alarming. Senator Taft testified that in 1962, only one of 218 Selective Service defendants in Ohio received prison sentences, and yet in Minnesota, 47 out of 141 defendants received prison sentences. I assume the military makes some recommendation. Do you have any comment on that?

General BENADE. No. I cannot speak, sir, with respect to the disposition of draft evaders. The best way, I think, that I can answer your question, sir, is to try to show you what has happened specifically to those deserters who have returned to military control from foreign countries, and I would be speaking from a factual basis, and not conjecture. I can tell you that as of December 31, 1973, of individuals who have been tried by courts martial, and I am speaking now of 669 cases, 268 were sentenced 1 to 3 months of confinement; 251 were sentenced 4 to 6 months of confinement; 93 received 7 to 12 months; 23 received 13 to 18 months; 23 received 19 to 24 months of confinement. Six received sentences between 21 to 36 months; four received a sentence from 37 to 48 months, and only one individual received a sentence of 49 months or more. Now, that is he actual disposition of the cases tried by court martial.

Mr. DRINAN. Very interesting. I do not know what they prove, though. You give them to me, and they are out of a record, but I do not know what they prove. I will study them.

General BENADE. As I understand your original point, you were inferring, if not stating, that there is some extraordinary penalty which is levied upon those who have gone to foreign countries?

Mr. DRINAN. Precisely.

General BENADE. And I have recited for you the statistics of the actual disposition of those cases of individuals who deserted to foreign countries and then returned to military control.

Mr. DRINAN. I would have to compare them to the ordinary person who returns to his unit and is reassigned to his unit without really any penalty except maybe the matter of discharge.

General BENADE. Well——

Mr. DRINAN. That is the question. You are admitting that you have no answer. I say that you are penalizing the people that go to foreign countries, and that the punishment they get is disproportionately large compared to those that remain AWOL for a time and then return to their unit.

General BENADE. Well, again, sir, I do not mean to be contentious.

Mr. DRINAN. I wish you would be, because I want the facts.

General BENADE. I was replying directly to you with the fact of the actual cases.

Mr. DRINAN. General, they do not prove anything, is my point. And my contention is you are penalizing the people that go abroad, and you are assimilating or reassigning the people who stay AWOL in America, and then come back, and they are reassigned to their units. All I am saying is you are making a crime of going abroad, or making it a very severe thing.

General BENADE. I disagree with that, sir.

Mr. DRINAN. All right. I wish you had some fact to base your disagreement on.

One last question. You say that a person resists and the Army policy is not to take any person back into the armed services who has, in fact, been a draft resister. As you know, a lot of people are opposed to that particular policy, and that some people feel that after all there is a moment of repentance for him. But, you allege that these draft resisters have a certain instability. Would you say that about an individual who applied for a CO status and it was denied, as many

of them are, because he simply does not qualify with the law? That he does not have a religious or moral philosophy against all wars, and if he is a selective CO, he will not get that status? Would you say about a boy like that, who now is no longer a draft resister? Would you say that he has instability in his character because he did not want to fight in Indochina?

General BENADE. No, sir.

Mr. DRINAN. Well, how can you, therefore, keep him out of the military?

General BENADE. I have absolutely no problem distinguishing between them, sir. You are going to have two kinds. You have the one who might have applied for conscientious objector status with the Selective Service System prior to his entry. His own neighbors will say they did not find adequate grounds to accept his contention. Now, that individual comes into the service. I respect him and——

Mr. DRINAN. He is a draft resister. He says I cannot coerce my conscience, I am not going into the service, and that, I think, that I have to resist, and he is a draft resister. He does not allow himself to be inducted. Later, assuming then he wants to serve his time, and the Army policy, as I understand it, is that he is barred forever—we do not want him because he has instability in his character. That is what I think that you said.

General BENADE. First, let me say, all four of the services are unanimous in their desire not to accept individuals into service who previously had evaded the draft laws. Now, I am not quite certain what the point is you are trying to get at with me, sir. I want to respond.

Mr. DRINAN. The point is this, sir, that you are saying in your statement on page 12 that the Department of Defense does not want or need draft evaders in its ranks, and you are saying that we do not want or need some of the most conscientious, moral young people in the country.

General BENADE. Mr. Drinan, I appreciate the fact that there are different reasons for people resisting. You are evidently able to reduce it to terms that I am not able to accept. You evidently have no doubt in your mind that every one of these young men who resisted the draft was motivated only by the highest of reasons.

Mr. DRINAN. I did not say that at all, General. I did not say that.

General BENADE. The inference, I think, sir, is there.

Mr. DRINAN. It is the minority of the people who resisted the draft that were of this conscientious objector status, and I am talking about them and only them.

General BENADE. I started to say, sir, in my own mind, and I speak now as an individual, I can sympathize and I can hurt for the young men who resisted the draft because of moral or religious principles. I am sorry that such a young man was not able to make his case on a conscientious objector basis because I think that is what the law provides for. I would feel badly if he was not able to establish that. But, I cannot accept a generalization. If it was not your intention to generalize, then I withdraw my comment, sir.

Mr. KASTENMEIER. Has the gentleman from Massachusetts concluded his questions?

Mr. DRINAN. Yes. Thank you.

Mr. KASTENMEIER. The gentleman from New Jersey.

Mr. SANDMAN. General, who sits on the board that approves whether or not the conscientious objector application will be approved?

General BENADE. After the young man has filed his application, sir, the procedure in general calls for a hearing officer to be appointed. That officer would be in the grade of capitain or higher. After he has examined all documents that the young man has submitted, interviewed the men and received such proof as can be adduced with respect to the young man's claim, he prepares written recommendations. Now, approval authority is vested in the Secretary of the Department concerned. He may delegate that approval authority down to an officer exercising general court martial jurisdiction. This is usually an officer in the grade of major general or higher. Approval can be granted at the lower level where the authority has been delegated. Disapproval must come up to the headquarters of the department concerned, and the final decision to approve or disapprove is then made at that level.

Mr. SANDMAN. To those who have the authority to approve or disapprove, are they all members of the military?

General BENADE. The secretaries of the services are civilians, sir.

Mr. SANDMAN. And the decision that they make, is it based upon a moral principle or a moral belief, or what is it?

General BENADE. The decision to approve or disapprove?

Mr. SANDMAN. Yes; to qualify, what must the individual show?

General BENADE. The regulations, sir, are written to take into account the definition of conscientious objection as defined by the Supreme Court in its latest decision, which no longer requires that the individual hold a religious belief. I cannot quite quote the words of the Supreme Court decision, but it says in effect, if an individual holds such belief, and it does not have to have a religious basis, but such that it would not give any rest to his spirit or his mind, this is considered to be a sufficient basis. The burden in the military services' as it is with the man who applies for conscientious objector status on the outside, is on the individual. He must prove that he comes within the ambit of the law and of the decisions of the Supreme Court.

Mr. SANDMAN. Well, under that definition, if an individual applied for conscientious objector status on the grounds that it was against his moral conviction to take part in the conflict in Southeast Asia, would a determination on that issue entitle him to classification as conscientious objector?

General BENADE. I do not believe so, sir, because I think the Supreme Court decision precludes an individual from picking and choosing which wars he will fight in.

Mr. SANDMAN. I have no other questions.

Mr. KASTENMEIER. The gentleman from Maine. I think the was the first one here this morning, and has been very patient.

Mr. COHEN. Thank you, Mr. Chairman.

General, what is your impression or opinion of success of the volunteer Army, to date?

General BENADE. I think that the Army is making excellent progress, Mr. Cohen. It has some problems. I think they will overcome them.

Mr. COHEN. In terms of numbers, are they at acceptable levels, or are they below acceptable levels, in your opinion?

General BENADE. The Army has been falling short in terms of its overall goals, Mr. Cohen. But, expressed as a percentage of total strength, it is not a significant concern. I think the main problem is to assure that you have the requisite quality and also that you are getting young men who are capable of getting into the harder and more technical skills. In other words, you need both numbers, and you need quality.

Mr. COHEN. And I just wanted to clarify it for myself. I think you indicated that part of the reasoning in your objection to any sort of amnesty would be that this would have a detrimental or a deleterious or harmful effect upon people who might be called upon to serve in future wars. Would you anticipate if the United States should become involved in a future conflict, that we would have to resort to the draft once again, or would the progress being made by the volunteer Army be sufficient to carry that out?

General BENADE. Well, Mr. Cohen, I do not think that we can ever make an assumption that we will never again fight in a war, or if we ever fight again in a war, that the standing force in being at that time would be sufficient.

Mr. COHEN. Let me just interrupt for a second. What are the percentages at the time of war compared to the draft, the draftees, and those who volunteer, for example, in the Second World War? Do you have the percentages of those who volunteered and those who were drafted?

General BENADE. No; Mr. Cohen. But, I can say, from personal knowledge and recollection, that we went in with the Army and Air Force combined, and I think their strength in the late 1930's was about 133,000 to 134,000. Of course, we went to 12 million men and women under arms when we reached our maximum strength in 1944. As I recall enlistments were even suspended for a while and the whole manpower was provided by the Selective Service System.

But, what makes it so difficult, sir, is that you cannot really have, with any assurance, figures as to the so-called true volunteers as compared to those who were draft motivated. In other words, in our recent experience while the draft was still operating, we had many people, several hundred thousand a year, who were volunteering and not being drafted. How many of them would have volunteered absent the induction authority and its operation is a great question.

Mr. COHEN. Let me ask you, what was the impact or influence upon the morale of the rest of the Army or the Armed Services of the admission of the CO's into a noncombatant type of service or alternative service? What was the impact of that group upon the morale of the servicemen?

General BENADE. I do not think there has been any adverse impact, sir. I base that on this: With respect to those individuals who were assigned to noncombatant duties, I think it was recognized that they were following the dictates of their conscience, and the system has always provided for such individuals in service. Many of them, as you know, were assigned to medical units, and I am very proud of the fact that many of them ultimately wound up with decorations for personal valor. So, there is no criticism whatever, so far as I am concerned, for a man to seek noncombatant status on a conscientious objector basis.

Mr. COHEN. The only point I am trying to reconciie in my own mind is that you draw a distinction between those who would be opposed philosophically, religiously to any form of warfare, and those who would be opposed to the Vietnam conflict. The distinction would make a difference to the morale of the armed services if, for example, someone who personally was opposed to the Vietnam war, who then decided he would like to make a contribution to this country entered the Service, that would be a very harmful impact or negative impact upon the rest of his fellow men. And yet, someone who has a total opposition to war can serve quite well within a noncombatant status.

General BENADE. I think the difference again, though, sir, lies in the fact that in the one case the man obeyed the laws of this country. He entered the Armed Services, as was his obligation, and he accepted noncombatant duties. This to me is in complete compliance with the law, both the letter and the spirit of it.

I think the concern of the Armed Forces, and the Department of Defense, is with respect to those who would pick and choose. That is of concern.

Mr. COHEN. Well, the problem, it seems to me, is the perenial one, and that is the reconciliation of ones moral conscience with obedience to the rule of law. And I would like to ask your opinion, General. Is there any point, in your opinion, that a soldier would be justified in refusing to carry out an order of his military superior?

General BENADE. Yes; I can certainly imagine cases where a soldier or an officer would be justified in disobeying the orders of a superior. I think you also know, sir, that the individual is responsible and that the order must be one that is illegal. He cannot simply pick and choose the orders which he will obey.

Mr. COHEN. Excuse me, General, but I am trying to relate it to an individual basis during a time of combat. Very few soldiers ever stop to ask questions—whether an order is illegal, an order from a superior, for example, to go into a village and perhaps decimate it. They do not stop and pause and say is that legal or illegal. There comes a point, and we have seen many examples of it, where pilots at one point along the way suddenly decide they cannot bomb a village or a soldier who cannot go in and wipe out villagers. There has to be some point where he says I cannot carry that out, and is that justified? Can you think of any situation where that would be justified, and if so, I would like your thoughts about the validity—I am thinking principally of the Nuremburg trials, because this is a question that continually comes up, the reconciliation once again of carrying out orders and disobeying them, and at what point do we reach that?

General BENADE. I am too, sir. I also had the Nuremburg trials in mind, and frankly, I also had My Lai in mind.

Mr. COHEN. Right. I did too.

General BENADE. The easiest case I can offer to you is this. Suppose in a combat situation you have detained either civilians or military of the opposing force, and they have been disarmed and they are under your complete control. If anyone were to then say to a subordinate, "I want you to execute those men," that order is clearly illegal on its face, and from private to general, they should know that that order is not to be carried out. I can think of no clearer illustration. It is an

order I would refuse to carry out, and I would expect any subordinate to refuse to carry out such an order.

Mr. COHEN. Thank you, sir.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

General, I have only one question. You pointed out that you sympathize with those that could have had a moral and conscientious objection to being involved in a war that they felt was very unjust. And you indicated that you would hurt for this man. Do you think that by sending him to prison, it would have a rehabilitative effect or would have a healing effect? What good can come from sending these people to prison?

General BENADE. I did not add that I thought those individuals should go to prison, sir. My personal belief is that such individuals should return to proper control. If it is a deserter, to military control, and if it is a civilian, to civilian control. I think a forum is available to them either in the civilian courts or in the military courts or through other processes to establish the basis for their refusal to abide by the law. I am simply saying I do not think you can generalize, sir. I think each case has to be handled on its merits.

Mr. MEZVINSKY. Taking the strict interpretation you have given concerning the law, if they have violated that law, they will be subject to going to prison, is that not correct?

General BENADE. They would certainly be subject to it, sir. I think the burden must, under our system, be on the individual to provide the basis whereby his neighbors or a jury of his peers, if it is a trial, will accept or reject the reasons the man gives. These circumstances and mitigation can be developed, if theer are any present.

Mr. MEZVINSKY. Then would you agree or not with the statement that if such a person was sent to prison, it would not have a rehabilitative effect?

General BENADE. It could. It depends on the individual. The whole theory, after all, of our penal system, is that it is supposed to have a rehabilitative purpose. How well it succeeds is another story.

Mr. MEZVINSKY. Thank you, Mr. Chairman. I have no further questions.

Mr. KASTENMEIER. Does the gentleman from Utah have any questons?

Mr. OWENS. No, I have no questions.

Mr. KASTENMEIER. In which case, the committee is indebted to you for your appearance this morning, General Benade, and for your testimony.

In order that the record be complete, I am placing in the record an exchange of correspondence between the subcommittee and the Department of Defense relating to amnesty.

[The correspondence referred to follows:]

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. KASTENMEIER: This is in reply to your letter of February 20, 1974, to the Secretary of Defense requesting information on several subjects. Answers to your questions follow.

(1) How many persons who were absent without leave or deserted during the period from 1963 to 1973 have never returned to military custody?

Our records on deserters (those who were absent for 30 days or longer) who have not returned to military control begin on July 1, 1966. As of December 31, 1974, 28,661 deserters remain at large.

(2) How many persons during the period from 1963 to 1973 were prosecuted under the Uniform Code of Military Justice for desertion?

During fiscal year 1963–1973, 3,919 persons were prosecuted under the Uniform Code of Military Justice for the offense of desertion.

3. How many veterans of military service during the period from 1963 to 1973 have been discharged with other than an honorable discharge?

Discharge statistics for the period fiscal year 1963 to fiscal year 1973 are as follows:

Under Honorable Conditions:	
Honorable (94.19%)	8,837,587
General (3.20%)	300,078
Total (97.39%)	9,137,665
Under Other Than Honorable Conditions:	
Undesirable (2.18%)	204,920
Bad Conduct (0.39%)	36,510
Dishonorable (0.04%)	4,042
Total (2.61%)	245,472
Total discharged fiscal year 1963–fiscal year 1973	9,383,137

I trust that this information will be of assistance to you.

Sincerely,

LEO E. BENADE,
Lieutenant General, USA,
Deputy Assistant Secretary of Defense.

FEBRUARY 20, 1974.

Hon. JAMES R. SOHLESINGER,
Secretary of Defense, Department of Defense,
Washington, D.C.

MY DEAR MR. SECRETARY: The Subcommittee on Courts, Civil Liberties, and the Administration of the House Committee on the Judiciary has scheduled hearings for March 7 and 8 on several measures relating to the subject of amnesty. In order that the Subcommittee might be informed as to the scope of the problem, I would appreciate your supplying us, prior to the hearings, with answers to the following questions:

(1) How many persons who were absent without leave or deserted during the period from 1963 to 1973 have never returned to military custody?

(2) How many persons during the period from 1963 to 1973 were prosecuted under the Uniform Code of Military Justice for desertion?

(3) How many veterans of military service during the period from 1963 to 1973 have been discharged with other than an honorable discharge?

Your cooperation in replying to this request by March 1 would be most helpful.

Sincerely yours,

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties,
and the Administration of Justice.

General BENADE. Thank you, sir.

Mr. KASTENMEIER. And should we have further questions we can submit them to you by letter?

General BENADE. Yes.

Mr. KASTENMEIER. Thank you very much.

General BENADE. Thank you, sir.

Mr. KASTENMEIER. The Chair observes the lateness of the hour and we have a number of witnesses left. In the interests of expedition, I would like to call on Congressman Dellums, who has a very brief

statement, rather than to hold him here at considerable length. It is a pleasure to greet the gentleman from California, the Honorable Ronald Dellums.

TESTIMONY OF HON. RONALD V. DELLUMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DELLUMS. Thank you, Mr. Chairman, members of the committee.

I am extremely pleased to appear before this subcommittee as it begins hearings on amnesty. I came to Congress with opposition to our adventurism in Southeast Asia as my No. 1 priority, and it is obvious that the legacy of the war is still with us, and can be found behind so many of the major issues of the day. Although unfortunately our tragic involvement in Indochina continues, the job is now left to professionals, and not a citizen army. It is therefore appropriate at this time to consider the question of amnesty.

Who needs amnesty? Not the politicians who led us into the war. Not the bureaucrats who consistently distorted the facts of the situation. Not any of the Congressmen and Senators who voted for the war. Not Lieutenant Calley, who has been declared useful to society. Not any of the thousands of young men with money or connections who evaded the draft in entirely legal ways—through higher education, the Reserves, exempted jobs, or conscientious objector status.

The people who need amnesty are not in a position to plea-bargain in return for suspended sentences. They could not claim privileges of any kind or demand immunity from indictment. They have few votes and little influence, and nothing much politically will happen to Congressmen who make these powerless people their enemy. They are the young men who were too unlucky, or too inexperienced, or too principled to find an easy way of avoiding direct responsibility for the horrors of an insane war—horrors that the rest of us viewed and argued about from a distance.

I am not going to speak at length about whether we should grant amnesty. The main reason for supporting amnesty is not to save these young men and their families, but to save our own souls—from easy self-righteousness and the indifference of power. However, I would like to say just a few words about the method of granting amnesty. I support a general, unconditional amnesty and I believe this is the most fair and efficient way of accomplishing the purposes of amnesty legislation. My bill, H.R. 3100, was designed to carry out this approach.

We much first decide a basic question of purpose; do we want to make sure that everyone worthy returns to society, even at what some in our society will call the risk of erring on the side of generosity? Or do we want to make sure that everyone pays their price and that no one gets anything they don't deserve?

Most amnesty proposals have this second purpose. Authors of these type proposals have greater confidence in the moral wisdom and inherent fairness of governmental processes than I have. They claim that the case-by-case approach is the only just one, because of the diversity of individual circumstances and motives.

I am aware of the many distinctions among deserters and evaders. It is precisely for this reason that I advocate a general amnesty approach. It would require the wisdom of Solomon to give everyone exactly what they deserve in this complicated and controversial area, and the case-by-case approach promises no greater success in achieving this goal than any other—especially if those called upon to decide are arbitrarily selected bureaucrats or local judges with their vastly differing opinions and outlooks.

It should be clear that general amnesty does not imply that nonrelated offenses are forgiven or expunged from the record. If a person went AWOL to escape prosecution for murder or theft, my bill will allow him to return, but only to face these charges again.

My bill sets up an Amnesty Commission, but only to handle what is left over after the bulk of the cases have been handled by automatic provisions. Although I believe that the more automatic amnesty is, the better it is for both the young men involved and ourselves, there should be some provision for handling special cases and exceptions.

Another area to which my bill pays special attention is the legal consequences of amnesty. If amnesty is to be meaningful, it must not only protect the individual from criminal prosecution, but include removal of any mention of relevant offenses from all records—the granting of honorable discharges where appropriate—and the nullification of any other legal consequences. In our complicated, competitive society, where a person is so much a prisoner of the records kept of his past, anything less would be a joke.

To sum up, Mr. Chairman and members of the committee, I believe a general, unconditional amnesty would be less expensive, would cause less bitterness, would be ultimately much more fair—in fact, would accomplish the aims of amnesty far better than any other approach. While other, more cumbersome proposals have been described as moderate compromises, in reality they reflect the same unbounded confidence in the moral wisdom of the establishment that got into the illegal, immoral, and insane war in Indochina in the first place.

I believe the deliberation of the subcommittee will be helped by some of the excellent articles that have appeared on amnesty and the individuals who are directly involved, since they bring out the human reality of the question. With the permission of the subcommittee, I would like to submit these for the record.

Mr. KASTENMEIER. Without objection, we will receive your statement and the articles.

[The documents referred to follow:]

STATEMENT ON AMNESTY BY RONALD V. DELLUMS

Mr. Chairman, Members of the Sub-Committee, I am extremely pleased to appear before this Sub-Committee as it begins hearings on amnesty. I came to Congress with opposition to our adventurism in Southeast Asia as my number one priority, and it is obvious that the legacy of the war is still with us, and can be found behind so many of the major issues of the day. Although unfortunately our tragic involvement in Indochina continues, the job is now left to professionals, and not a citizen army. It is therefore appropriate at this time to consider the question of amnesty.

Who needs amnesty? Not the politicians who led us into the war. Not the bureaucrats who consistently distorted the facts of the situation. Not any of the Congresspersons and Senators who voted for the war. Not Lt. Calley, who has been declared "useful to society." Not any of the thousands of young men

with money or connections who evaded the draft in entirely legal ways—through higher education, the Reserves, exempted jobs, or Conscientious Objector status.

The people who need amnesty are not in a position to plea-bargain in return for suspended sentences. They could not claim "privileges" of any kind or demand immunity from indictment. They have few votes and little influence, and nothing much politically will happen to Congressmen who make these powerless people their enemy. They are the young men who were too unlucky, too inexperienced, or too principled to find an easy way of avoiding direct responsibility for the horrors of an insane war—horrors that the rest of us viewed and argued about from a distance.

I am not going to speak at length about whether we should grant amnesty. I believe in unwaivering terms that we must. The main reason for supporting amnesty is not to save these young men and their families, but to save our own souls—from easy self-righteousness and the indifference of power. However, I support a general, unconditional amnesty and I believe this is the most fair and efficient way of accomplishing the purposes of amnesty legislation. My bill H.R. 3100, was designed to carry out this approach.

We must first decide a basic question of purpose: Do we want to make sure that everyone worthy returns to society, even at what some would call the risk of erring on the side of generosity? Or do we want to make sure that everyone "pays their price" and that no one gets anything they don't deserve?

Most amnesty proposals have this second purpose. Authors of these type proposals have greater confidence in the moral wisdom and inherent fairness of governmental processes than I have. They claim that the case-by-case approach is the only just one, because of the diversity of individual circumstances and motives.

I am aware of the many distinctions among deserters and evaders. It is precisely for this reason that I advocate a general amnesty approach. It would require the wisdom of Solomon to give everyone exactly what they "deserve" in this complicated and controversial area, and the case-by-case approach promises no greater success in achieving this goal than any other—especially if those called upon to decide are arbitrarily selected bureaucrats or local judges with their vastly differing opinions and outlooks.

It should be clear that general amnesty does not imply that non-related offenses are forgiven or expunged from the record. If a person went AWOL to escape prosecution for murder or theft, my bill will allow him to return, but only to face these charges.

My bill sets up an Amnesty Commission, but only to handle what if left over after the bulk of the cases have been handled by automatic provisions. Although I believe that the more automatic amnesty is, the better it is for both the young men involved and ourselves, there should be some provision for handling special cases and exceptions.

Another area to which my bill pays special attention is the legal consequences of amnesty. If amnesty is to be meaningful, it must not only protect the individual from criminal prosecution, but include removal of any mention of relevant offenses from all records—the granting of honorable discharges where appropriate—and the nullification of any other legal consequences. In our complicated, competitive society, where a person is so much a prisoner of the records kept of his past, anything less would be a joke.

To sum up, I believe a general, unconditional amnesty would be less expensive, would cause less bitterness, would be ultimately much more fair—in fact, would accomplish the aims of amnesty far better than any other approach. While other, more cumbersome proposals have been described as "moderate compromises," in reality they reflect the same unbounded confidence in the moral wisdom of the Establishment that got us into Indochina in the first place.

I believe the deliberation of the Sub-Committee will be helped by some of the excellent articles that have appeared on amnesty and the individuals who are directly involved, since they bring out the human reality of the question. With the permission of the Sub-Committee, I would like to submit these for the record.

I would like to thank the Sub-Committee for their attention and for the interest in Amnesty legislation.

AMNESTY
Questions & Answers

Why Amnesty?

America owes itself the enactment of a universal, unconditional amnesty for all war resisters of the Viet Nam era. Those who refused to participate in the war in Southeast Asia — a governmental undertaking of great moral, political and constitutional dubiousness—ought not to be subjected to criminal or administrative punishment. It would be compounding the injustices of this tragic episode in American history if the only people to suffer criminal penalties would be those of the young generation who had the courage to say "NO" to the war. They made the crucial decision of their young lives in the light of what millions of Americans and many of our political and religious leaders said: that the war in Viet Nam was a terrible mistake, if not a ghastly crime.

What Is Amnesty?

Amnesty is the discretionary act of a sovereign state of deciding to abstain from prosecuting groups of citizens who may be in conflict with the law for political reasons. Amnesty is the law's "forgetting" (cf. amnesia) of certain acts, in the interest of social justice and reconciliation. It is the law's way of undoing what the law has done. Like pardon, amnesty is not a *right* but a matter of grace which a government may perform in the interest of society at large. *U*nlike pardon, amnesty affects not a single person but entire classes of possible law violators, and unlike pardon it does not remit further punishment for someone already convicted of a crime. Rather it is a decision not to raise the issue of whether there has been any criminal conduct.

AMERICAN CIVIL LIBERTIES UNION
22 EAST 40 STREET
NEW YORK, N.Y. 10016

Who Should Get Amnesty?

The American Civil Liberties Union advocates a universal and unconditional amnesty for all those who have suffered or

face criminal or administrative penalties for non-violent acts of evasion or resistance to the draft, to the military, or to the war in Southeast Asia. We seek amnesty for draft refusers, deserters, persons convicted by courts-martial for military offenses not punishable under civilian law, veterans with less-than-honorable discharges, and civilian protesters and resisters to the war.

How Many People Would A Universal Amnesty Affect?

Draft refusers: Some 7,400 men have been convicted by the federal courts for draft violations during the Viet Nam era. The Selective Service System has referred to the Department of Justice for prosecution some 39,000 additional draft violators. There are about 5,700 draft indictments pending. Unknown thousands never registered for the draft and therefore have no present record of delinquency but are subject to prosecution whenever their violation comes to the attention of the government. No one knows how many files lie unexamined in the draft boards around the country that will reveal draft law violations when someone gets around to checking them.

Deserters: According to the Department of Defense, there are now over 32,000 deserters "at large." They are either in exile abroad or they live underground in this country. (Almost 100,000 men deserted from the military *per year* during the height of the Viet Nam war. Most of them were either apprehended or voluntarily returned to military control.) Many of the deserters did not have the benefits of an advanced education or much reading and discussion about the merits of the war. They could determine only *after* entering the armed services that they could not accept the depersonalization and racism of military life or the brutalities and insanities of the war. Many saw active and honorable front-line service in Viet Nam only to be so appalled by the senseless destruction of a people and their country that they left the military on their own. To discriminate against deserters in any amnesty would mean to make of amnesty another instrument of discrimination on grounds of class and race, just as the burdens of the draft and of combat fell disproportionately on the poor and the non-white elements of our society.

Exiles: An estimated 30,000 to 40,000 war resisters are in exile abroad, most of them in Canada. A few hundred are in Sweden, England, France and other countries. The exiles comprise both draft refusers and deserters. Canada admitted about 20,000 draft-age American men as "landed immigrants" during the Viet Nam era, but many of the exiles could not meet the stringent Canadian qualifications for becoming "landed." They entered Canada as "tourists" and have remained there beyond the expiration of their tourist permits. Their "illegal" status is a severe disability (for example, they cannot legally hold jobs), but the Canadian government has not deported or extradited any American who is charged only with violation of the draft law or with desertion.

Court-martial convictions: 550,000 men were convicted by military courts of offenses that would not be crimes in a civilian context, over half of them for absence without leave, about one-tenth for disobedience, others for conduct bringing discredit upon the armed forces, and the like. Since these men would not have been in the military but for a war and draft of doubtful constitutionality, their records should be cleared. The proportion of minority-group GI's court-martialed was many times the ratio of the white GI's.

Less-than-honorable discharges: About 450,000 Viet Nam-era veterans have less-than-honorable discharges. Such discharges are given either "administratively," that is, without any due process whatever ("general" and "undesirable" discharges), or as a result of court-martial ("bad conduct" and "dishonorable" dis-

charges). Less-than-honorable discharges carry with them severe disabilities, including loss of veterans' benefits, disqualifications for civil service and other employment, for licenses, and the like. Even "honorable" discharges bear code numbers which indicate to government agencies and prospective employers the arbitrary opinion of the military that the veteran was guilty of drug abuse, bedwetting, disloyalty, apathy, and similar bad habits, thus severely prejudicing the veteran's opportunities. Less-than-honorable discharges have been the military's favorite device to rid the services of "trouble-makers" or to summarily cashier out of the service men who became victims of drug abuse that was so endemic in Viet Nam and elsewhere in the military. In greatly disproportionate numbers, less-than-honorable discharges were imposed upon men from minority communities and from the less well educated and poorer segments of society.

Civilian protesters and resisters: During the years of the war in Southeast Asia, hundreds of thousands of Americans protested the war in demonstrations and acts of resistance. Thousands were arrested on charges ranging from the minor, such as disturbance of the peace or trespass, to the very serious, such as conspiracy and violation of the espionage acts. Principled, nonviolent disobedience and resistance to the war in Viet Nam should not carry criminal penalties.

Will A Post-Viet Nam Amnesty Be Unprecedented?

No. Amnesty has a long and distinguished tradition in American history. After almost every military engagement in our history, whether at home or abroad, America has extended amnesty to those who found themselves in conflict with national authority over those wars. President Washington extended an amnesty to the Pennsylvania farmers who engaged in the "Whiskey Rebellion." The most famous example is the Civil War, in which the Southern states committed what the Constitution defines as high treason, namely levying war against the United States; yet not a single political or military leader of the Confederacy was ever tried for treason because of the series of amnesties proclaimed by Presidents Lincoln and Johnson. After World War I, President Harding individually pardoned some of the war resisters of that period, including Eugene V. Debs. After World War II, President Truman established an "Amnesty Board," which tried to make judgments about the merits of each of the over 15,000 men convicted of draft violation. The board ultimately recommended only about 10 per cent of the draft violators for presidential pardon, and the selection process discriminated systematically against the poor, the less articulate, members of minority groups, and adherents of certain religious sects.

Who Can Extend Amnesty?

The Constitution of the United States gives the President the power to grant pardons for federal crimes and, by extension, to grant amnesties. But amnesty can also be enacted by the legislature. A number of amnesty bills have been introduced in the Congress recently and some hearings have been held.

Should There Be An Amnesty Board To Review Each Case On The Merits?

Amnesty by its very nature relates to whole classes of political offenders. A case-by-case adjudication of the moral, religious, ideological or political *bona fides* of hundreds of thousands of young men is uncalled for. Aside from the overwhelming administrative or judicial burden such a process would entail, it must also be remembered that any tribunal would have to make extremely delicate judgments about the personal convictions held by

these young men years earlier when the act of war resistance occurred. Case-by-case examination of the war resisters would discriminate in favor of the educated and articulate, who can communicate a philosophical position about the war to persuade some tribunal of the depth of their conviction.

Should Some Form Of Alternative Service Be Demanded From Amnestied War Resisters?

Alternative service is a form of punishment. All the resisters have already suffered either the pains of prison, the terrors of underground life, or the bitterness of exile. There should be no additional punishment exacted from them. Moreover, no system of forced labor is likely to be socially constructive.

Will Amnesty Create Disrespect For The Law?

Amnesty does not do away with law. Amnesty is a lawful way to undo injustices and destructive hardships created by the law. Since amnesty is a discretionary act, it does not create an incentive for others to ignore or violate laws with impunity, because in the ordinary course of events criminals cannot routinely expect amnesty or pardon. But after the war in Viet Nam, amnesty would enhance a sense that the law is not an instrument of repression against those who act non-violently in the light of their conscientious commitments.

Will Amnesty Dishonor Those Who Fought And Died In Viet Nam?

The war in Viet Nam produced neither victory nor honor. It produced only victims —in Southeast Asia and in America. Those who served in the war, those who were wounded, and those who died were victims of the war, just as those who went to jail or underground life or into exile were victimized by it. Most men who were ordered to fight assumed that they had an obligation to follow the government's orders. Some were eager to do so. They did not act dishonorably or uncourageously by obeying. At the same time, those who thought the war immoral and illegal showed extraordinary courage by defying the power of the United States government.

What Needs To Be Done To Obtain A Universal, Unconditional Amnesty?

1. Obtain and publicize information about war resisters and amnesty, through personal contacts, the media, meetings, and the like. The ACLU Project on Amnesty has such material, including a list of sources for other printed materials, books, films, speakers, etc.

2. Arrange for public and organizational meetings on amnesty.

3. Identify the families of war resisters in your community and help them organize into an outspoken and visible part of the amnesty movement, in conjunction with veterans, ex-prisoners of war, Gold Star Families, and other war victims who support amnesty.

4. Establish and maintain contact with the American and exile organizations (civic, religious, peace, etc.) that work for universal and unconditional amnesty.

5. Urge your local community groups, churches, organizations, legislative bodies and the like to adopt resolutions in support of a universal, unconditional amnesty, and send these resolutions to the press, to your Washington representatives and to the President.

6. Circulate petitions for amnesty.

7. Urge your local newspaper, radio and television stations to make space and time available for discussions of amnesty.

This information was prepared by Henry Schwarzschild, director of ACLU Foundation's Project on Amnesty.

2E873

[From the Congressional Record, Oct. 23, 1973]

Amnesty Must Not Be Forgotten

HON. RONALD V. DELLUMS, OF CALIFORNIA, IN THE HOUSE OF REPRESENTATIVES

Mr. Dellums. Mr. Speaker, the bitterness of the war years lives on. More than ever we need comprehensive amnesty legislation, so that we may—to use a current phrase—move beyond the obsessions of the past. More and more people are beginning to realize that amnesty legislation may set a good precedent in these troubled times.

One of the most determined opponents of amnesty has recently received a suspended sentence. No one has suggested that he now wear a distinguishing mark, as he once did in the case of resisters. I say this in no spirit of taunting bitterness, but—could this man now find it in his heart to advocate suspending the penalties of those who transgressed the law, not through greed, but through conscience? Who stood up and received the penalties Mr. Agnew understandably wished to spare himself and his family?

All around us the powerful are toppling, betrayed by their distorted view of the world. But let us not allow the sound of the crashing pillars of state smother the sound of those languishing in our prisons, or living in barren flats in Sweden and Canada, or looking for a job with the stigma of a bad military discharge. There is no greater duty than to remember the weak, and I ask my colleagues to take time from their pressing concerns to undo the damage the war has wrought—more for our sake than theirs.

At this point I would like to put in two statements on amnesty and tax resistance that have been prepared by the Church of the Brethren and adopted by their annual conference of this year. I think these are excellent statements that bring out all aspects of the question in a fair, clear manner. The statement on amnesty is especially to be commended for emphasizing the duties and opportunities of local communities to do the job of amnesty on the concrete, human level. I hope these statements will remind us of an issue that should not be forgotten, and will not be forgotten until it is resolved.

Conference Statement 1973—Amnesty

AN ANNUAL CONFERENCE STATEMENT

The following "Statement of the Church of the Brethren on Amnesty" was adopted by the Church of the Brethren Annual Conference, Fresno, CA, June, 1973.

Introduction

There are thousands of persons today who have felt the effects of the dividing wall of hostility which has been generated by war. Social relationships in the family and between families have been damaged because persons have had different beliefs and convictions about war. Even after the war has been declared over, there remain divisions which cause suffering for persons and groups in our society.

The Church of the Brethren regards this situation with concern and sorrow not only because we believe that war is sin, but also because we understand that the gospel message can bridge the walls of hostility which exist, between exiles, families, and government.

At its root, the concept of amnesty had to do with the biblical understanding of reconciliation. How can there be reconciliation between parents and children in the United States? How can there be reconciliation between the government and exiles? How can there be reconciliation between those with different opinions on war? How can we restore the unity of our nation while maintaining integrity both for the country and its people?

We, the members of the Church of the Brethren, believe that reconciliation is most likely if the following things occur:

1. The United States Government should grant unconditional amnesty to all those who are alienated from their nation because of their personal acts of conscience in relation to war.

2. Christians, both individually and as denominations, should become agents of reconciliation wherever such service is needed.

Biblical basis

In the New Testament, the theme of reconciliation is central to the understanding of God's love for persons in Jesus Christ. The gospel calls us to a ministry of reconciliation.

First, according to Ephesians 2:14, reconciliation is a gift of God. *For he is our peace, who has made us both one, and has broken down the dividing wall of hostility . . .* Through God's action in Jesus Christ, there is reconciliation between people while there are differences (John 10:16; Galatians 3:28). Even though the disagreements on many issues separate people within our nation, there can be reconciliation if we accept it as God's gift.

A declaration of amnesty follows this model. Through amnesty, a government can forget the legal penalties connected with the actions of a group of persons, and thereby declare that the unity of its people is more important than continued hostility and division. Amnesty can bring reconciliation even though significant differences remain on the issues at stake, because such an action removes the punitive measures related to such differences. Reconciliation is a gift of God and he will bring peace if we trust him (Psalm 118:8–9).

Second, according to II Corinthians 5:18, the church is called to be an agent of reconciliation. (*All this is from God who through Christ reconciled us to himself and gave us the ministry of reconciliation.*) The Church of the Brethren has always taken this Scripture seriously and we have set out to be reconcilers. As Christ was the mediator between sinners and God, so the Church is called to a ministry of reconciliation between persons and God and between people in conflict with one another.

Whatever the government does about amnesty, there will be need for reconciliation. Many men have become alienated from their families and local communities and now want to be reunited. Many young people could return home now without legal difficulties, and may if they have a supportive community. Some may decide to return and face the legal penalties rather than remain as exiles. On many levels there is work of reconciliation which could be done by the Church. The Scriptures lead us to such a ministry.

Historical background

Throughout its history, the Church of the Brethren has taken seriously the task of bringing persons together. During the Revolutionary War the Brethren refused to side with either army, but worked to bring peace to their communities. It was Elder John Kline in the War between the States who tirelessly rode the circuit of reconciliation to keep persons at one in faithfulness to Christ. During and following World War II, Brethren took in and aided Japanese-American refugees. The present situation presents the Brethren another opportunity to be involved in healing the wounds of war and to be faithful to the ministry of reconciliation.

The present crisis

The question of amnesty is being debated in the press, discussed on radio and television, and kept much alive in our nation's capital. Several amnesty bills and resolutions have been introduced since the present session of Congress began.

In any discussion of amnesty, we are talking about hundreds and thousands who have suffered some legal disability because of war. For instance, tens of thousands of these persons have come out of the military service in the Indochina War with less than honorable discharges, have been convicted of Selective Service violations or have become exiles, for conscience's sake.

Conclusion

Therefore, we come to these conclusions on the question of amnesty:

1. As United States citizens, we believe that reconciliation is more important for our nation than the punitive wrath of the law. We favor unconditional amnesty for all those who due to an act of conscience are alienated because of war. We recommend the officers of Annual Conference make these views known to the President and appropriate persons in Congress.

2. As Christians we believe that our ministry of reconciliation begins now. Whatever the government does, we must begin working now to bring reconciliation between those who have become separated because of their views on war. We recommend the following action:

(a) We recommend that our members and local congregations provide a supportive community for all persons who desire reconciliation with their government, families, and/or local communities. This might involve such activities as providing a context in which persons can talk with their parents or children, providing a home for those who need a place to live while becoming reestablished in a community, helping men who choose to face a prison experience.

(b) We recommend our General Board provide program and resources to help members and local congregations be agents of reconciliation for persons alienated from their government, their families and/or their local communities. This might involve communication with and support of exiles and deserters in various parts of the world, publicity on the services, and education of local congregations.

We pray that reconciliation can become a reality and that our nation can become unified around purposes which reflect the will of God in our time.

[From the Washington Star-News, Jan. 5, 1974]

LAIRD AIRS AMNESTY PLAN DISCUSSED DURING WAR

Former Defense Secretary Melvin R. Laird revealed today that he ordered a conditional amnesty plan for draft law violators prepared while Americans still were dying in the Vietnam war.

Laird, now counselor to the President for domestic affairs, said he believes "we have always felt in this country that justice must be administered with compassion and mercy." Congress will deal with the amnesty issue before the 1976 elections, he said.

"We didn't go public with it," Laird said of the secret Pentagon amnesty discussions, "because we were in a position in which people still were being drafted and people still were dying.

"Now, for the first time in a long time, Americans aren't dying in a war."

"I think there can be some sort of service for these people," Laird said of Americans who fled from their country rather than serve in the military during the war.

"Whether that service should be in the military or in hospitals or in other areas, and whether it should be for six months or two years, I'm not prepared to say."

With those comments, Laird stepped into the amnesty controversy hardened by President Nixon, who on Jan. 31, 1973, said, "Amnesty means forgiveness. We cannot provide forgiveness for them."

In an interview with Scripps-Howard newspapers, Laird said he had former Army Secretary Robert F. Froehlke prepare a plan while American forces were engaged in the Vietnam war.

Reached in Stevens Point, Wis., where he now heads an insurance company, Froehlke said the move grew out of a series of "friendly conversations" he and Laird had on the amnesty issue while both served in the Pentagon.

"I felt strongly, and I know that Mel did too, that it didn't make any sense to talk (publicly) about amnesty while you were drafting people and kids were being killed," said Froehlke.

Now that American involvement in the fighting has ended, however, Froehlke said, he is afraid "99 percent of the American people will just forget about the problem.

"We should look at it. Now is the time," Froehlke said.

"Young people make mistakes. We should to the best of our ability forgive and forget. We can't go into this with a vindictive attitude."

Froehlke said he would be willing to back "as little as two or three months" of compensatory public service for draft law violators and military deserters who want to return home.

"Congress will deal with the issue either in this session or in the next," Laird predicted.

[From the New York Times, Feb. 7, 1974]

FT. DIX: AWAITING TRIAL

(By Lewis Simon)

FORT DIX, N.J.—The first anniversary of the Paris cease-fire accords that ended our ground combat role in Vietnam was marked Jan. 27. For me, that date also marked the end of my first month in the Fort Dix stockade, awaiting trial for desertion. My crime: refusal to accept military duty in Vietnam.

Locked behind these bars, I find it painful to realize that for most people the Vietnam era is already history. In some circles, it's considered bad taste to even mention the war now. Many public officials have encouraged people to believe that a decade of suffering and death in Indochina is best forgotten. Despite their feeling that the Vietnam involvement ushered in the most disgraceful period in America's history, people try, understandably, to put the experience behind them. But for me and my family, and the tens of thousands of families like us, the Vietnam era continues.

Despite the universal denunciation of our war policies in Vietnam—even by the architects themselves—we who resisted the war are daily prosecuted, imprisoned, or branded with a "bad" discharge.

Five years ago this last Christmas, I faced the most difficult decision of my life. I could either carry out military policies I learned to abhor or I could quit the Army. My decision did not come easily, but only after months of personal anguish. During basic training, there were wall posters that portrayed the dismal effects for anyone going A.W.O.L.: loss of pay, rank and prison time. At the bottom was a mother of a deserter sobbing, her face hidden in her hands, with the caption "Family Disgrace."

When I decided to quit the Army, the sobbing mother-figure never entered my mind. By then, I had already seen and learned too much that was disgraceful within the military to worry that my family's "honor" could be related in any way to the perverted values of the military command in Vietnam.

I know only too well the military's brand of "justice." In advance of any hearing, I have been adjudged guilty; all that's left is the facade of a trial and sentencing. The same military and civilian commanders who conducted the war in Vietnam are prosecuting me and tens of thousands of other resisters rather than admitting that they themselves are responsible for the destruction of Indochina and the thousands of American casualties.

The question of who are the real criminals must finally be put into perspective.

We who resisted committed only the "crime" of refusing to carry out illegal policies in Vietnam—we not only need amnesty, we deserve it.

[From the New York Times, Oct. 19, 1973]

VIETNAM VETERANS ARE CRITICAL OF DISCHARGES THAT "STIGMATIZE"

WASHINGTON, Oct. 18—A group of Vietnam veterans who received less than honorable military discharges said today that the "bad" discharges were a result of their opposition to the Vietnam war and racism in the armed forces and had "stigmatized" them for life.

The charges came in the second of a series of unofficial hearings before the ad-hoc Congressional amnesty panel presided over by Representatives Bella S. Abzug, Democrat of Manhattan, and John Conyers, Jr., Democrat of Michigan.

The young veterans, blacks and whites, told of their early opposition to the war, and, for some, desertion, which led to their undesirable discharges and subsequent loss of G.I. educational and medical benefits.

The armed forces has five types of discharges. An honorable discharge is received by about 90 per cent of those persons leaving the service. A general discharge is something less than an honorable discharge but still entitles the ex-serviceman to all G.I. benefits, according to the Veterans Administration.

REQUIRED BY LAW

A dishonorable discharge is awarded by a court-martial and its recipient cannot receive any benefits. Decisions on benefits for those who receive the other two types of discharge—bad conduct and undesirable—are up to the Veterans Administration.

According to the officials of the V.A., the agency is required by law to "go back and review the circumstances surrounding the discharge." If the V.A. finds there was "willful and persistent misconduct" by the discharged person, then no benefits are granted.

But today's witnesses contend discharge, which is decided in an administrative proceeding rather than by a court-martial, scarred them for life. Dwight Green, a 22-year-old resident of New York City, told the panel that his undesirable discharge had resulted in his being denied unemployment benefits, V.A. benefits and a decent job.

Representative Edward I. Koch, Democrat of Manhattan, has introduced legislation that would reduce the number of kinds of discharges from five to three. One of these three types would permit the armed forces to discharge a person for any reason. But Mr. Green advocated just one type of discharge. "It should be just a release—the Army shouldn't be given the power to brand," he said.

Ira Dubois, another of the almost 600,000 former servicemen who have received less than honorable discharges, received a bad conduct discharge from the Marines after he "refused anything to do with the military" including wearing a uniform. He told the panel he had refused because he had seen "so many people blasted away to hell in Vietnam" and because he had become a "self-destructive person."

[From the New York Times, Nov. 15, 1973]

A WELFARE MOTHER

(By Kathleen A. Berglund)

BURLINGTON, VT.—My husband is one of those who refused to join the Army during the Vietnam war. John is not a "draft dodger," he never made any attempt to run or hide from legal authorities in this country. On the contrary, he remained at home and worked steadily from the time of his initial refusal to join the Army (two and one-half years ago) until he left for prison. His record was so good that the judge allowed him one week after sentencing to make arrangements for Eric (our son) and me before reporting to prison. It is obvious that John is not a dangerous person. It is inconceivable that any man who refuses to join the Army for moral reasons, knowing that a refusal means a prison sentence, could be considered dangerous. John refused to join the Army because he believes it is morally wrong to kill and wrong to be any part of an organization designed for the destruction of human lives.

If refusing to be responsible for the death of another human being is a crime, then I belong in prison also. It can be argued that John is in prison not for moral reasons but because he broke a law. But then the question arises: has the Government a right to select certain individuals to do its killing. Isn't it slavery when a man is forced to join an organization he believes to be morally wrong and further forced to commit actions he believes to be morally wrong?

Moral issues can be debated endlessly with no resolution, but there is also a material side to this problem. We were never rich while John was working, but we never went hungry either. John worked hard because he believes it was his responsibility to support his family and now that he is not here we have no choice but to live on welfare. Now I know what it feels like to be poor: there are never enough food stamps to last until the end of the month and buying a pair of shoes for my son has become a major investment. If not for generous friends and relatives, we would be in serious trouble.

Living on welfare is difficult, but living on welfare when my husband is perfectly willing to and capable of supporting us is horrible. When I stand in line to buy food stamps, I see people who need the money more than I do. Taxpayers complain about the growing number of welfare recipients and higher taxes, yet there are so few who make any attempt to change the situation. If my husband

was released from prison, the Government would save $268 a month plus whatever it costs to support John in prison.

To say that I am outraged by the injustice of this situation would be an understatement. I married John because he was the most loving, beautiful human being I had ever met. I, more than anyone else, know that he does not belong in prison.

There is no logical reason for keeping John or any other draft resister in prison. They can not be rehabilitated because they have no need for rehabilitation. It is true that they are being punished, but in punishing innocent men society suffers. Can Americans afford the financial burden involved in keeping these men in prison? Can the United States afford the loss of even one moral human being? Isn't it time for amnesty?

[From the New York Times, Jan. 30, 1973]

Amnesty for Draft Resisters Is Expected To Be Divisive Political Issue for Years

Forces Asking Pardons Are Gathering Strength

(By Anthony Ripley)

Washington, Jan. 29.—Like the Vietnam war itself, the issue of amnesty for those who refused to fight seems likely to be a divisive and emotional part of the American political scene for many years.

It raises once again the old catch phrases and stances that became such a familiar part of politics during the long war.

Backers of amnesty—church groups, antiwar and antidraft activists and civil libertarians—argue that, with the war over, it is only right to forgive and forget.

Opponents of amnesty—veterans groups, the Department of Defense and conservative politicians of both parties—argue that lawbreaking and disloyalty cannot be tolerated in American society.

This week, amnesty forces are gathering strength and making plans for an international conference of antiwar exiles to be held in Paris Feb. 19 through 22, according to Tod Ensign of the Safe Return Committee in New York City.

Opponents Bide Time

Opponents of amnesty, confident that they have the bulk of American society behind them, are biding their time.

Patrick E. Carr, commander in chief of the Veterans of Foreign Wars, was briefed on the question by his staff for a news conference in Washington. But the question never came up. The V.F.W. opposes general amnesty.

In Massachusetts, State Representative Peter Harrington introduced a bill to require the state to defend any draft resister who returned home and faced prosecution.

Jerome Riley, a 26-year-old former Vietnam paratrooper, later confronted Mr. Harrington and gave him medals and campaign ribbons "in memory of all my comrades who died there, who gave their lives so that you could make a mockery of justice and democracy and the American system."

Amnesty emerged as an issue in the Presidential campaign. Both candidates had trouble with it.

President Nixon was dogged by an early statement that he would be "very liberal" and yet demand that deserters and draft dodgers pay a price for breaking the law. He turned tougher as the campaign went along and "very liberal" was not heard again.

M'Govern View Hardened

Senator George McGovern began a year before Election Day with a general call for amnesty. By September he excluded deserters and by October he was suggesting alternative service.

Each camp asserted its man stood firm. It was clear, however, that both candidates had found they were standing in a fire.

Their shifts were a signal that though seven years of war might be almost over, some of that war's central questions—bitter and divisive ones—remain facing the public and will not go away: Was it a just war? Were the young men who

avoided the fighting cowards and traitors who betrayed their country or were they heroes and patriots who showed their country the way to a new high level of morality?

Positions on the matter are remarkable for their passion.

Henry Schwarzschild, of the American Civil Liberties Union's project on amnesty, said failure to grant it would "ultimately wreak terrible damage to this country.

"It is an absurd and tragic irony if President Nixon can make peace with the enemy incarnate in Peking and Moscow and cannot make peace with the sons of our own country," he said.

Representative William J. B. Dorn, Democrat of South Carolina, told the House of Representatives in April: "Amnesty for those who broke the law and fled the country is an incredible proposal. Amnesty would be a severe blow to the defense of our nation during these critical times.

"Amnesty would undermine all law. It would be a step toward anarchy, chaos and a breakdown of all discipline so necessary for the survival of al our democratic institutions."

GENERAL INTEREST STRESSED

Henry Steele Commager, the historian, told the Senate Subcommittee on Administrative Practice and Procedure last March 1 that the matter should not be decided on short-term politics or anger.

"A nation does not adopt important policies—policies affecting the lives of hundreds of thousands of its young people and affecting the whole fabric of the social and moral order—out of petulance or vindictiveness," he said. It bases its judgment rather on the interests of the comomnwealth.

"Who knows what is ultimately just or what will utimately satisfy the complex passions of a vast and heterogeneous society?

"We should make our decisions on the question—complex enough to be sure—of what appears to be the long-range interest of the nation."

The word "amnesty" itself is legally ill-defined. It is not in the Constitution. It means granting "oblivion" a general pardon for a past offense and is generally used to cover a whole class of citizens. Pardon, in contrast, removes only the penalty for a past offense and generally is defined as being offered to a single individual.

The Supreme Court in Brown v. Walker in 1895 noted that the Constitution specifically gives the President power to pardon "for past offenses against the United States except in cases of impeachment." The Court added such language does not bar Congress from passing "Acts of general amnesty."

FIVE BILLS INTRODUCED

Amnesty for Vietnam war objectors has been promoted by churches and private groups. Five bills were introduced on the subject in the 92d Congress.

The bills ranged from universal, unconditional amnesty under the "War Resisters Exoneration Act of 1972," proposed by Representative Bella S. Abzug, Democrat of New York, to a limited amnesty bill proposed by Senator Robert Taft Jr., Republican of Ohio.

Senator Taft's bill would have left deserters to the mercy of military courts while offering amnesty to draft resisters if they volunteered for some alternative to combat, such as service in veterans' hospitals.

The number of men covered by any amnesty varies widely and in many categories is simply guesswork.

Warren W. Hoover of the National Interreligious Service Board for Conscientious Objectors named five categories of those possibly affected by amnesty.

They include exiled draft resisters and military deserters, estimated at 60,000 to 100,000; resisters and deserters in civil or military prisons, on probation or facing court action, 10,000; resisters and deserters underground in the United States, about 80,000 a year with many quickly returning; Vietnam-era veterans with less than honorable discharges, 300,000, and an unknown number of civilians charged with antiwar acts.

The largest of the categories is made up of those veterans with dishonorable, bad conduct, undesirable or general discharges from service. In the past, Mr. Hoover said, such men were not considered in amnesty actions. However, those who feel the war is immoral believe anyone who lost any measure of civil rights because of it should be given amnesty, even convicted war criminals.

Almost all of those urging such a broad, plenary and unconditional amnesty, refuse to include in the amnesty those men convicted of crimes of violence.

History offers a President and the Congress at least 34 past amnesties to study. They stretch from the Whisky Rebellion amnesty of 1795 under George Washington to the pre-Christmas amnesties granted by Harry S. Thuman in 1945, 1947, and 1952.

Mr. Truman's last amnesty was for all convicted of deserting between the end of the World War II and June 25, 1950, when the Korean war broke out. It was done in the lame duck days when his Administration was leaving office. There was no amnesty after the Korean War.

Following World War II Mr. Truman had set up a special hearing board to look into 15,805 cases of draft evasion, desertion and like crimes of men who were in Federal custody. The board recommended case-by-case decisions and only 3,041 were pardoned.

In many ways, Vietnam is a unique situation.

There has never been a longer American war, and never a higher desertion rate.

Never before has there been such a broad definition of what constitutes legitimate conscientious objection: Moral and ethical objection to war, according to the Supreme Court in 1970.

It was a definition that changed during the progress of the war. Some conscientious objectors went to prison or to Canada in the early days for beliefs that would have won them a draft deferment a few years later.

The courts changed, too.

In 1967, the Justice Department prosecuted 996 cases of draft violation. Convictions that year ran 75 per cent with 89 per cent of the guilty going to prison. By 1971, 2,974 cases went to court. Only 35 per cent were convicted. Almost 63 per cent got probation.

The war poses other philosophical questions as well. Dr. Willard Gaylin, professor of psychiatry and law at Columbia University Law School said at the Senate hearings that the war resisters' crimes might have been that they were "premature prophets" who "raised a question and came to a conclusion which was at one time unpopular and now is the accepted view of the majority."

RESPONSIBILITIES CITED

John H. Geiger, national commander of the American Legion, told the committee that deserters and evaders had refused to accept their responsibilities as citizens—responsibilities that cannot be "applied to some and evaded by others."

"We cannot believe that the Congress will ever decide that those who violated the law have the superior moral position to the President, the Congress and to the men who served. If we establish this as the correct view, the day will arrive when there will be little further use for the Presidents, the courts or the Congress."

Former Representative Charles O. Porter of Oregon has organized a group called Amnesty Now. He said in a telephone interview:

"We have to characterize this war. Was it a good war or a bad war? If it was a bad war, if the young men were right and the old men were wrong, then you've got to have amnesty. And only a strong nation can give it."

Mr. Hoover was optimistic about the amnesty question.

"I am certain chances would be better than after any previous American war experience," he said.

The Nixon Administration's view, endorsed by the President, was stated by Vice President Agnew in a speech before the Veterans of Foreign Wars in August. He said: "On every ground I can think of—historical, legal moral and practical—the idea of general amnesty without penalty or alternative service is totally without merit."

[From the New York Times, Feb. 13, 1974]

THE PARDONING PRESIDENT

President Lincoln's generosity of spirit can be found most notably in his treatment of Confederate prisoners and Union deserters. He took his role as Commander in Chief seriously, yet even during the war's fury bent military rules to save lives and rehabilitate men. In messages to Congress and the people, he pointed out that his proclamation of amnesty was "amply justified by the Constitution."

With one pen he signed orders for new draft calls; with another he spared the lives of young men who, for one reason or another, refused to fight for their country or even ran off the field of battle. If there was a contradiction here that displeased Lincoln's generals, it was a contradiction in which the heart triumphed.

Punishment and false patriotism were not to be assigned to his name. To Secretary of War Stanton he wrote: "Regarding the fourteen-year-old sentenced to be shot for desertion, let us instead pardon this drummer boy and send him back home." To General Sheridan he telegraphed: "Suspend execution of death sentence and forward record of trial to me for examination. If a man had more than one life, I think a little hanging would not hurt this one, but as he has only one I believe I will pardon him."

Today, more than a year after the end of the military (though not financial) presence of Americans in Vietnam, after a war that many in Congress and the country considered unconstitutional, there are still tens of thousands of citizens who are being punished without trial by a vindictive Administration. These include draft resisters who are in prison or underground in their own country; deserters living in Canada or Europe who are afraid to come home; veterans with less than honorable discharges because of antiwar activities who cannot get an education or a job. And to these must be added their anguished parents, wives and children.

Lincoln's Birthday and the days that follow provide occasion for the Federal Government to show the same spirit of détente toward American war resisters that Washington is showing toward foreign governments whose weapons were aimed, not long ago, at American men under arms. To overlook these Americans, who are twisting in the wind of vengeance, is to perpetuate the divisions caused by the Vietnam war.

The pardoning sixteenth President called those in need of amnesty what they still are today, "neighbors and neighbors' sons."

AMNESTY:
The Record and the Need

by John M. Swomley, Jr.

". . . it appears to me no less consistent with the public good than it is with my personal feelings to mingle in the operations of Government every degree of moderation and tenderness which the national justice, dignity and safety may permit."—(from George Washington's proclamation of amnesty, July 10, 1795.)

This document is meant to be a study guide for those who wish to learn about and discuss the issue of amnesty–amnesty for persons who have been unable, because of their convictions, to participate in the war in Vietnam. The amnesty which is sought is for those American citizens who are in prison, who are in self-imposed exile from their country, or who have been forced to desert from the armed forces because of their conscientious opposition to the war.

The questions at the end of Dr. Swomley's article are intended only to begin discussion and to assist individuals and groups think through the issues which the article raises. Surely, there are many other areas for discussion than those raised by the questions. It is hoped that this document will be used for study in churches and synagogues, for the issues raised will grow increasingly urgent as more and more persons go into exile, are sent to jail, or are forced to desert the armed forces because of the war in Vietnam.

Portions of this article originally appeared in the January 1, 1969 issue of the *National Catholic Reporter*, under the title of "Memo to Nixon: Why Not an Amnesty?" They are reprinted here with the kind permission of the *National Catholic Reporter* and of Dr. Swomley.

John M. Swomley, Jr., who has his Ph.D. in political science, is Professor of Social Ethics at St. Paul School of Theology, Kansas City, Missouri. He was formerly executive secretary of the Fellowship of Reconciliation and has written a number of books, including *The Military Establishment* (Beacon), *American Empire* and *Liberation Ethics* (Macmillan). He is a member of the National Committee of Clergy and Laity Concerned and of the National Board of the American Civil Liberties Union.

AMNESTY: THE RECORD AND THE NEED

More than 100,000 young Americans are either in exile or have otherwise refused to comply with draft laws. An even larger number of men who entered the armed forces have been classified as deserters.[1] Still others, perhaps as many as 100,000 to 200,000 civilians, have been arrested and convicted for anti-war activity; in addition, numbers of soldiers have been disciplined and placed in military stockades and prisons.

Some men and women have gone to prison for dramatizing their opposition to war and conscription by burning draft cards, damaging draft files, or by engaging in other forms of civil disobedience.

Many of those who refused to obey draft laws felt they could not qualify as conscientious objectors to all war. Some objected only to the war in Vietnam while others either believed they could not meet other conditions imposed by the Selective Service law or for other reasons did not cooperate with the drafting process. Those who deserted differ from those who refused to be drafted in that they became opposed to the war or to military life after they entered the armed forces rather than before.

All these men and women are political offenders rather than typical violators of the law. A political offense generally refers to statements or actions which have as their primary purpose 1) the obeying of conscience rather than a specific law, or 2) the protesting of governmental policy, or 3) the achieving of change in government. Those who have engaged in political activity against the war in Vietnam or conscription offer no threat to life or personal property and generally no threat to political institutions once the injustices they have protested have been ended. Nevertheless their existence as a class of political offenders threatens the well-being or harmony of the nation.

Societies can become or remain free only if their political dissenters are permitted to contribute to the political life of the country. Any society is endangered if it has thousands, let alone hundreds of thousands of members who have been alienated to the point of disobedience, by government prosecution of a war they are convinced was unjust or served no defensive purpose. Their punishment or threatened punishment, including their loss of voting or other civil rights, rankles and may even anger or otherwise alienate a wider circle. These political offenders are so numerous that they sympathetic families and friends easily include more than a million adults scattered throughout the nation.

What is Amnesty?

The word *amnesty* comes to us from the Greek word *amnestia* which means *not remembering, oblivion, intentional overlooking.* Today it means "a general overlooking or pardon of past offenses by

[1] A deserter is one who is absent for more than 30 days from his military post without leave. In 1968 the Pentagon reported more than 53,000 deserters. During the first 10 months of Fiscal Year 1971 the Army alone reported 68,449 deserters.

the ruling authority."[2] It differs from a typical pardon in that it involves a whole class of offenders rather than one or a few individuals. The Supreme Court of the United States has made another distinction: "A pardon relieves an offender from the consequences of an offense of which he has been convicted, while amnesty obliterates an offense before conviction; and in such case, he stands before the law precisely as though he had committed no offense."[3]

Who Has Authority for Amnesty?

The United States Constitution gives the President "power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." The framers of the American Constitution borrowed the idea from England, where it had been firmly imbedded in Anglo-Saxon law for centuries. Amnesties have been declared in the United States by Congress; by the President acting with the authorization of Congress; and by the President alone. A post-Civil War dispute between Congress and the President over the power of the President to grant amnesties was resolved by Supreme Court decisions which gave effect to Presidential amnesties. The Court refused to distinguish between the Presidential power to pardon and to grant amnesty, and in effect held that the power to pardon *includes* the power to grant amnesties.[4]

Amnesty in Other Countries

The first recorded amnesty occurred about 403 B.C. when Thrasybulus, after the expulsion of the Tyrants from Athens, forbade any punishment of citizens for their past political acts and exacted an oath of amnesty to eliminate civil strife from legal memory. Julius Caesar again and again granted amnesty to his political and military foes.

In French history, there has been a number of amnesties. Probably the most famous was the Edict of Nantes, a proclamation issued by Henry IV in 1598 which put an end to persecution and gave legal status and religious liberty to the Huguenots. Napoleon's imperial decree of 1802 provided amnesty, as did amnesties after the civil disturbances of 1871 and the Paris Commune.

In English history, the best-known amnesties were those after the Civil War in 1651; one proclaimed by Charles II in 1660; and the amnesty of 1903 to the Boers in South Africa.

Various countries have granted post-war amnesties to both enemies and to their own citizens: for example, France, Norway, Germany, Belgium, Japan and the Netherlands granted amnesties to persons engaged in compromising activities during the second World War. General Lucius Clay proclaimed an amnesty for more than a million German political offenders under 27 years of age, and General Douglas MacArthur similarly liberated almost a million political prisoners in Japan following World War II.

[2] *The Oxford English Dictionary*

[3] U.S. v. Bassett 5 Utah 133 (1887)

[4] U.S. v. Klein, 80 U.S. (13 Wall) 147 (1872), and Armstrong v. U.S. 80 U.S. (13 Wall) 156 (1872)

Amnesty in the United States

George Washington on July 10, 1795 granted "a full free and entire pardon" to those involved in an insurrection in Pennsylvania against the United States. In explaining this to Congress, he said:

> For though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet it appears to me no less consistent with the public good than it is with my personal feelings to mingle in the operations of Government every degree of moderation and tenderness which the national justice, dignity and safety may permit.

John Adams in May, 1800 granted an amnesty for those involved in another "wicked and treasonable insurrection" in Pennsylvania which had occurred a year earlier. James Madison proclaimed in 1815 "a free and full pardon of all offenses . . . touching the revenue trade and navigation" in the vicinity of New Orleans. Andrew Jackson in 1830 pardoned all deserters at large, provided that they never again served in the armed forces.

During the Civil War, on December 8, 1863, Abraham Lincoln offered a full pardon to those who "participated in the existing rebellion" who were prepared to take a prescribed oath. (Certain classes of persons were excepted). Lincoln also directed the War Department in February 1864 to see to it "that the sentence of all deserters who have been condemned by court martial to death . . . be mitigated to imprisonment during the war . . ."

Congress in 1862 had authorized the President to grant amnesties, but Lincoln asserted that his authority was derived not from Congress, but from the Constitution which gave him "absolute discretion" on this point.[5]

Following the Civil War Andrew Johnson proclaimed a partial amnesty in 1865, another in 1867 and finally, on July 4, 1868 a full pardon to every one who "participated in the late insurrection of rebellion except for those under indictment for treason or other felony." Finally, on December 25, 1868, he granted a Christmas "amnesty for the offense of treason against the United States . . ." President Johnson's first proclamation stated his reasons for pardon:

> A retaliatory or vindictive policy, attended by unnecessary disqualification, pains, penalties, confiscations and disfranchisements, now as always could only tend to hinder reconciliation among the people and national restoration, while it must seriously embarrass, obstruct and repress popular energies and national industry and enterprise. . .

Congress in 1867 had repealed its authorization to the President to grant amnesties, hoping to discourage Johnson from granting them to former Confederates. Johnson proclaimed an amnesty nonetheless and, despite challenge, it was enforced. In 1898 Congress itself authorized a universal amnesty following the Spanish American War.

[5] *The Messages and Papers of the Presidents 1789-1894*, pp. 188-189. J. Richardson, editor, 1896.

There were no *general* amnesties following World War I and II.

Calvin Coolidge on March 5, 1924 restored citizenship and civil rights to those who had deserted from the military or naval forces between November 11, 1918 (Armistice) and the technical ending of World War I. Franklin Roosevelt issued a Christmas pardon in 1933 for persons convicted under the Espionage Act and conspiracy to violate Section Five of the Selective Service Act of 1917, and who paid the penalty the law imposed on them. This was a limited amnesty, since it did not pardon fugitives from justice or men sentenced by military courts. (It was in these military courts that the best-known conscientious objectors or absolutists were sentenced).

Following World War II, President Harry Truman was under great public pressure to grant an amnesty. He appeated to comply with the demand while actually avoiding it by appointing an amnesty board of persons hostile to the idea of amnesty. On their recommendation, 1,523 of the 15,805 who had been convicted under the Selective Service Act were pardoned on December 23, 1947. For the most part, Truman's phony 1947 amnesty excluded Jehovah's Witnesses, political prisoners, and those willful violators of the law who had walked out of the conscientious objector camps. Earlier, on Christmas in 1945, Truman had granted full pardon to all former prisoners who had served honorably in the armed forces for at least a year. Thus, former criminals were pardoned while men whose beliefs led them to violate the Selective Service Act were not.

The violators of the Selective Service laws from World War II through the Korean War and the Vietnam War, as well as all persons subject to prosecution for or convicted of political offenses from 1933 to this date have neither been amnestied nor pardoned and are therefore currently deprived of some of their rights as citizens.

Why Amnesty Now?

Amnesty is usually granted only for political offenses against a government. In a number of the Presidential pardons and amnesties described above, the offense involved actual war or insurrection against the United States, which the Constitution calls treason. The men and women who have been convicted or are liable to prosectuion for political offenses today are not charged with military action or insurrection against the United States. Their offense is either that they valued freedom too highly to submit to conscription or that their consciences did not permit them to contribute even indirectly to the war in Vietnam. Americans may rightly differ about the wisdom of their actions, but it is quite clear that acts of these objectors in no way involved the destruction of life or armed revolt against the government of the United States. When Presidential amnesty has been granted for the more serious offense of armed insurrection, why should amnesty be withheld from men who were apparently motivated by humanitarian opposition to war?

2) One major purpose of amnesty is to heal the wounds and divisions of war; to restore confidence in government on the part of those who have been alienated by the war. It is obvious that former Presidents of the United States had such healing in mind after the armed uprisings in the 1790s and the 1800s. The division in the

United States today is just as real. It is not based on sectional grievances, nor is it confined to any part of the United States. Rather it is chiefly defined by age–draft age–or by the kind of idealism that expected the United States to behave differently from other nations. Still, the fact must be acknowledged that the U.S. war in Vietnam has been opposed and condemned by many highly respected citizens in all walks of life and of all age groups. Whatever one may think of the phrase "credibility gap," it does express a loss of faith in their government by thousands of Americans. An act of amnesty now might help restore their faith in their government.

2) Another purpose of amnesty is to bring back into useful citizenship those who are now barred by legal restrictions. Many of those sentenced for draft or war resistance will be barred by state laws from voting, or running for public office. Others may find it difficult or impossible to enter certain professions such as law, with a technical felony on their records. Needless to say, the thousands in exile from the United States would be valuable assets to American society were they able to return with freedom from imprisonment.

3) Amnesty would also end the emotional and economic suffering of the families of those who are in exile or who are otherwise subject to prosecution. Many if not most of the well-educated white upper and middle class whites were able to avoid the draft and the war. They entered the reserves or received college deferment or in some cases were adjudged sincere conscientious objectors. It was chiefly the children of the poor, or blue collar, working class parents, often members of minority groups, who submitted to induction. They became deserters or were sentenced by court-martial because they became opponents of the war only after their experience in the armed forces revealed the cruelties and the wrongness of fighting in Vietnam.

These parents of deserters and others in exile are less able to travel to other countries to see their sons and daughters or to phone them periodically. They are unable to assist them if they are unemployed or otherwise in need. In some cases, aging parents or a surviving parent or brothers and sisters, are in need of the physical and emotional support of those who are subject to prosecution if they return home or who are restricted in their earnings because of a conviction on their record.

These families, together with their friends and neighbors, are in varying degrees affected by the exile or imprisonment of persons they have known intimately as children and young adults. The renewal or increase of their confidence in their country and in their fellow citizens would be a by-product of amnesty.

4) The war in Vietnam is now seen by an overwhelming majority of Americans either as a serious mistake or as revealing the need to change our foreign policy. A Columbia University professor of constitutional law has written: "If the war is found to have been the basic mistake from which all else flowed, those who opposed it sooner and more vigorously than the rest of us are to be regarded as having performed a service through their illegal acts. They may well have sped the general realization of the war's true character. . ."[6]

5) Prisoners of war are sometimes freed during war but almost

[6]Prof. Louis Lusky, "Amnesty for Whom, and How Much?", *The National Observer*, March 11, 1971

always at the end of the war, in spite of their direct participation on the other side. There is an implied recognition that they did what duty and citizenship required of them. Governments ought similarly to recognize the devotion of some of their other citizens to a higher moral duty or citizenship that makes them disobey an order for induction or decide they cannot continue in the armed forces. Amnesty for those who opposed the war in Vietnam in the only ways they believed open to them at the time, would in effect be an acknowledgement by government of the serious moral dilemma in which the war placed many of its sensitive young citizens. The fact that these opponents of the war subjected themselves to prison or went into a self-imposed exile points to their courage rather than cowardice, to their conscience rather than to callousness. A democratic society should be able to recognize that no war is so just that conscious or unconscious injustice is not involved in it, and that some of those sensitive to injustice will refuse to participate in it.

Objections to Amnesty

1) *Those who have violated the law should expect to be punished instead of being forgiven.* Amnesty is not a matter of forgiveness but is the way the government can undo what the government itself has done. The 1964 election was won on a no-war platform. The 1968 election was won on a clear pledge to end an unpopular war. Neither pledge was kept. Technically and morally it follows that a small group in Washington who nevertheless made the decision to enter an undeclared war, escalate it and continue it, broke the law. Those Americans who have incurred criminal penalties because of a war that should never have been begun should have the penalties removed for acts they would not have committed but for the war.

2) *"A blanket amnesty would let all the so-called 'high-principled' off and with them it would let off all the 'low-principled'–the stickup men and wanted murderers who failed to register in order to flee justice."*[7] There is no evidence that robbers or murderers went into exile because of the draft rather than to avoid being caught for robbery or murder. In any event if there is a robber or murderer who is also a draft violator, an amnesty for the political offense of resisting the war would not apply to those criminal offenses unrelated to the draft and the war. He could be prosecuted for the crime he committed instead of penalizing him solely for his actions on the war. Moreover, the mere fact that a few persons may have had previous criminal records does not justify different treatment for them on a different issue. If a man has served a sentence for violating the narcotics law and is no longer involved in narcotics he should not thereafter be punished again by withholding amnesty granted to others.

3) *Instead of blanket amnesty each person's case should "be heard in court and tried on its merits."*[8] The courts in the United States refuse to distinguish between political offenses and crimes against persons or property. To ask the courts to deal with each case is to ask that each person be prosecuted. In many cases draft and war resisters

[7] Leavitt A. Knight, Jr., "The Amnesty Question for Draft Evaders: Are They All the Same?" *American Legion Magazine*, May, 1972.

[8] *Ibid.*

have already been tried by civilian or military courts. Their youth, inadequate education, and lower economic status often meant an inability to make an articulate defense in court or secure a competent attorney. For the courts to deal all over again with more than 100,000 cases would be an intolerable burden on courts that are already heavily overloaded.

This case-by-case approach was followed by Harry Truman's three-man Amnesty Board which functioned like a parole or pardon board, because it was opposed to amnesty.[9] Yet it excluded almost 90% of the persons in need of amnesty, including large groups of Jehovah's Witnesses, "the uneducated, minority group violators. It applied criteria such as previous convictions that eliminated lower class persons who are classically more often arrested and convicted for petty offenses. Even though the total number of cases before the Truman Amnesty Board was perhaps one tenth of the number that a board would have to consider now, they spent a very few minutes going over each case history to decide a man's fate."[10]

The whole idea of amnesty is contrary to a case-by-case approach. The latter would punish those who are unacceptable to those doing the review, whereas amnesty is intended to heal division or restore harmony to the nation.

3) *A general amnesty might have the effect of lowering the morale of the armed forces, or making it less likely that others would enlist.* The best answer to this is that apparently none of the amnesties of the past has resulted in such lower morale or unwillingness to enlist. A government that is concerned about healing the wounds of war and rectifying injustice is more likely to inspire a higher morale than one which seeks the last drop of blood from each enlisted man who runs afoul of the law.

4) *Amnesty should be conditional on some kind of "alternative service" to the nation.* Those who would be amnestied see such conditions as punishment or penance for refusing to participate in an illegal and immoral war. Others point out that two or three years' alternative service in a government agency such as a veterans' hospital or VISTA would take jobs away from those who need them solely in order to make those who resisted the war earn an amnesty. American Legion spokesmen object to such a conditional amnesty because men who would not fight in Vietnam will take jobs away from unemployed vetarans of that war. They also indicate that "the quality of service in V.A. hospitals and other agencies" would go down if they were staffed with men who viewed "government service as a sort of punishment."[11]

[9]It was composed of Owen Roberts who was also chairman of a "Citizens Emergency Committee for Universal Military Training;" James F. O'Neill, the police chief of Manchester, N.H. and subsequently National Commander of the American Legion, and Willis Smith, who waged a racist campaign for Governor of North Carolina.

[10]Henry Schwarzschild, Director of Project on Amnesty of the American Civil Liberties Union Foundation, U.S. Senate Hearings on Amnesty, March 1, 1972.

[11]Leavitt A. Knight, Jr., *loc. cit.* The Legion also objects to a blanket amnesty.

5) *If there is, as some maintain, a growing disrespect for law in our society, would not an amnesty further contribute to this breakdown of law and order?* Respect for law begins with those who make and enforce the laws. If they violate constitutional provisions with respect to war, violate international law and other laws with respect to treatment of civilians and prisoners, they do not encourage respect for law by prosecuting those who would not engage in such immoral and illegal actions. Amnesty would erase such a double standard and in effect stop the prosecution of those who refused to aid and abet the larger crimes, placing them in no greater legal jeopardy than those in government who violated law on a major scale.

The concern about law and order relates chiefly to the growth in crimes of violence against persons or property. Those who are political offenders because they would not condone the massive violence in Vietnam would, if their civil rights are restored, tend to be a civic influence in our society against violence and against a repetition of wars like that in Vietnam. The conditioning of a society to accept war and the mass training of young men by the Army in techniques of violence tends to encourage the spirit of violence. If the President or Congress would amnesty those who rejected both the massive violence of the war in Vietnam and the illegal entry by one nation upon the land of another, it would not thereby imply that violence and the infringement of the rights of others were being honored.

The Social Meaning of Amnesty

Amnesty can change only *legal* status. It does not change society's social approval or disapproval of what happened. It does not mean that the position of those who disobeyed an order or law requiring military action in Vietnam has now been vindicated. To some Americans the offenders against the draft are heroes; and to others, villains. Those who view them as heroes will be less able to view amnestied men as martyrs and those who view them as villains may take some satisfaction from that fact for they are less likely to be symbols of continuing opposition to government if they are amnestied. On the other hand, amnesty does not silence opponents of conscription or war: Neither are they silenced now by penalties already imposed or about to be imposed. For many Americans, Eugene Debs in prison during World War I was a greater reminder of the injustice of government than if he had been free to speak on the outside. Similarly, the imprisonment of "good" men taking place today is a constant prod to many Americans who generally have not had friends or acquaintances in prison.

Americans generally have frowned upon imprisoning men for political reasons. Although violation of a conscription law is technically the same as violating any other law, Americans do not assume that it involves the violation of other persons or personal property implied by assault or theft. Breaking the draft law is a political offense in that it challenges a political course of action which the government can implement only by taking away a man's freedom. Those who have resisted conscription and war, at any level, are political offenders and constitute the largest category of present and former Federal political

prisoners in the United States today. In a sense, the test of how democratic any government is depends upon the number of political prisoners it puts or keeps behind bars. In the eyes of millions of people around the world, the reputation of the U.S. as a democracy would be enhanced rather than diminished by amnesty for those who have been convicted for draft- and war-related offenses, as well as for those in exile or still awaiting trial.

Suggested Questions For Discussion

1) If there is, as some maintain, a growing disrespect for law in our society, would not an amnesty further contribute to this breakdown of law and order?

2) Do you believe that each person should, or indeed has the responsibility to, follow his "conscience," even if it means violation of the law?

3) Does a person ever have the right or obligation to break the law?

4) What kind of effect would an amnesty have on Vietnam veterans; families who have lost a loved one in the war; those who have resisted military service at this time; the way which other nations view the United States?

5) Does our history as a nation have anything to suggest with respect to the appropriateness of an amnesty following the Vietnam War?

6) Is it a sign of governmental strength or weakness to grant an amnesty? Why?

7) What is the difference between political and non-political crimes?

31-658 O - 74 - 39

Mr. DELLUMS. Thank you, Mr. Chairman.

I would like to thank the subcommittee for their attention and for their interest in amnesty legislation.

Mr. KASTENMEIER. We appreciate your statement, Congressman Dellums.

In order to try to determine what is realizable in terms of legislation, is it your view that the country is ready, willing, and able to accept congressional legislation providing for general, unconditional amnesty today?

Mr. DELLUMS. I think so, Mr. Chairman.

One of the tragedies of this issue is that it is discussed within the framework of the political arena.

The second tragedy is that all of us are seeking reelection, and that raises the ultimate tragedy which is that we often do not deal with the content of an issue, but deal with the expedient nature of a question.

I think that the American people are prepared for us as Members of Congress to assume some moral leadership, some leadership with integrity and honesty and conviction. The American people, it seems to me, are tired of docile leadership, expedient, frustrated leadership. I think Members of Congress who have the courage to say that thousands of young people were also exercising some kind of courage when they stood up, when the majority of the American people were saying, "Bomb them back to the Stone Age," to say that they will not be involved in a war that they considered illegal, immoral, and insane. I think the American people are ready for it, because I think the American people are ready for somebody to begin to assume some of the leadership that has been lacking for the past 5 or 6 years in this country.

Mr. KASTENMEIER. I yield to the gentlemen from Illinois.

Mr. RAILSBACK. In the interest of time, I will not ask any question, and I want to thank you for coming.

Mr. DELLUMS. Thank you very much, Mr. Railsback.

Mr. KASTENMEIER. The gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. In the same interest of brevity, I only want to direct my question to one area. In your statement, you refer to the idea of allowing those worthy to return to society, and at the same time, you just want to make a general stamp and allow everyone to return. Is that not a little inconsistent?

Mr. DELLUMS. I do not think so, because I think all of these young men are worthy of return to this society. It seems to me that the greatest asset a society has is its humanity, and its greatest investment in itself, and its future, is its young. And it seems to me a society that is not capable of welcoming back its own young men who stood with some courage around a very important and complicated question is a society destined to die. And it seems to me that all of the young people who took some position on this question deserve a right to return. Even when we convict people of very serious criminal offenses and send them to prisons, we still say that we will give them an opportunity to return to our society. So, I think all of our young people are worthy of return.

Mr. SANDMAN. Such a position, though, does it not just automatically say everybody who did this did it for a good reason? Are we not going a little far when we say that?

Mr. DELLUMS. Well, our bill sets up an automatic amnesty provision only for strictly-defined draft and desertion offenses, but we do set up a Commission to handle some cases that may not be adequately handled in this automatic approach. For example, when there were acts of violence against a person or property where there may have been some serious questions about how close these kinds of activities were to the question of how they felt about war and their involvement in it—this is something that the Commission could handle. But I think that the more automatic it is, the better it is. The Commission is set up to handle those case-by-case individual situations that are a little more difficult to approach.

Mr. SANDMAN. The other thing that you have in your statement, which to me seemed rather sweeping, is the fact that you would have in general a repeal of all discharges to the point that you would have a nullification of all discharges less than honorable. Do you mean that? Is this what you think should be done automatically?

Mr. DELLUMS. This particular bill only relates to less-than-honorable discharges caused by protest to the Indochina war. But I have gone farther than that, and I intend soon to introduce a piece of legislation that would remove all discharges, and give people a certificate of service upon completion of service. I think that discharges are discriminatory. I think we have overwhelming information to indicate the racism and the class prejudice involved in the distribution of discharges. We have documented proof that many of the branches of the services use the discharge as a punitive mechanism to remove war protestors or people who oppose war, or people who were raising questions around equal opportunity policy in the military. And the military itself has even admitted this. I think that there is no room in our modern society for the discrimination of honorable, less than honorable, dishonorable discharges. If a person goes to service, they ought to be given a certificate of service. If they committed a crime that is worthy of adjudication in the military, then let the process continue. But it seems to me that person should not have to take a less than honorable discharge and carry it for 60 or 70 years into the future when many of us, and I would suggest to the gentlemen, that even many of us at 18, 19, 20, and 21 years of age, were not the responsible, mature selves that we find at over 40. And I do not think that young people ought to have to carry the burden of those kinds of acts for 50, 60, and 70 years into the future.

I think we ought to move on.

Mr. SANDMAN. One last question. Do you honestly believe the majority of one, that is 50 percent plus one share your opinion in the United States?

Mr. DELLUMS. You said 50 percent plus one of the American people?

Mr. SANDMAN. That is the smallest majority I can think of. Do you believe that they share your opinion?

Mr. DELLUMS. I have no way of knowing, but I would say this to the gentleman, that I do not think that politics ought to be based on where 51 percent of the community is. I think that that is an expedient approach to what representation is. We are representatives, 435 of us, elected by approximately 460,000 people who pay us on a full time basis, and give us staff, and provisions to function on a full time basis. The American people do have access to the same information you and I have. The decision ought to be whether you and I believe that am-

nesty should take place, and if you and I believe that it should, then our moral conviction and our integrity ought to allow us to advocate it and vote for it. My belief has always been, even with the Vietnam war, that if 95 percent of my district felt that we should bomb the Vietnamese back into the Stone Age, and I felt that that war was illegal, immoral, and insane, I would vote against the war, and take my chances on reelection. I think that is the only way that politics in this country are going to make any sense.

Mr. KASTENMEIER. We thank our colleague from California for his testimony this morning.

Mr. DELLUMS. Thank you.

Mr. KASTENMEIER. I should like to say that the gentleman from Maryland, Mr. Hogan, has a statement for the record.

The gentleman from California, Mr. Corman; the gentleman from Pennsylvania, Mr. Murtha; as does the gentleman from Alabama, Mr. Bevill, also have submitted statements for the record.

[The statements referred to follow:]

STATEMENT OF THE HONORABLE LAWRENCE J. HOGAN, MEMBER OF CONGRESS

My name is Lawrence J. Hogan and I represent the fifth Congressional district in the State of Maryland. I wish to commend the chairman of this distinguished Subcommittee, Chairman Robert W. Kastenmeier, for calling these hearings to deliberate on the most emotional issue left in the wake of the Vietnam war; what to do about the American draft dodgers and deserters.

The end of the war has prompted advocates of amnesty to again call for the free return of those who avoided their military obligation to the United States.

There are those who argue that these young men should be granted unconditional amnesty. Others argue that they should be allowed to return, but only if they commit themselves to a period of public service.

I am here today to express that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President with respect to persons who are in violation of the Military Selective Service Act because of their refusal to register for the draft and/or their refusal to be inducted. This should hold true as well for those members of the Armed Forces who fled to a foreign country to avoid further military service in violation of the Uniform Code of Military Justice.

Certainly the right to choose is an intrinsic part of our American heritage. However, those who have chosen to leave the country rather than serve may have been within their rights to make that decision, but now they must live with the consequences.

Whatever their reasons, they are draft dodgers and deserters who refused to answer their country's call. While they were sitting safely in Canada or Sweden, over a million men were risking their lives in Vietnam and over 55,000 men were dying on the battlefield—for their country.

None of these men who left the country to avoid their military obligation will be marked by the scars of battle for the rest of their lives. None of their wives is a widow.

What those who have fled the country now seek is not amnesty or forgiveness. They seek vindication, approval by the United States Government, that they were right and the U.S. wrong. To grant what these few thousand deserters demand would be to dishonor those millions who served their country with honor.

Exoneration of draft dodgers and deserters would set a precedent that might convince young men, in future emergencies, that they risk little or nothing in ducking their country's call to service. The impact would be dramatic and adverse upon the men in the service who either volunteered or answered the call of duty. Furthermore, our country would be divided, not united by such a policy.

Amnesty would also condone law breaking. The individual does not have the right to choose the laws he will obey and the laws he will disobey.

According to the Gallup Poll findings, Americans are moving toward a harder line of forgiveness for those draft evaders and deserters. In June, 1972, sixty

percent of those questioned were opposed to unconditional amnesty. A following poll taken in Febraury of 1973, showed 67 percent opposed. Only 29 percent favored unconditional amnesty.

It would be unwise to grant amnesty because it could establish a precedent inviting other young men to "cop out" in the future. It would be unjust because the returning men would in no way have offered equivalent service or sacrifice.

It would also be grossly inequitable, when returning Vietnam veterans are having such difficulty finding jobs, to allow those who shirked their duty to compete in the job market with men who performed their duty.

If draft dodgers wish to return to enjoy the freedoms and benefits of the country which they were unwilling to serve, then they should return as they left, expecting prosecution. The maximum federal penalty for desertion and draft evasion being five years in prison.

Mr. Chairman, as a sponsor of one of the bills before your Subcommittee, H. Con. Res. 144, I am deeply concerned that the Congress act according to the principles of law and insist that anyone who has evaded the draft or deserted, pay his full price for breaking the law. The price is a criminal penalty for disobeying the laws of the United States.

I appreciate having the opportunity to come before this distinguished Subcommittee today and I urge you to give due consideration to those principles and values I have espoused and which are intrinsic to our system of government.

STATEMENT OF CONGRESSMAN JAMES C. CORMAN, DEMOCRAT OF CALIFORNIA

Mr. Chairman, I would like to preface my statement by commending your subcommittee for holding hearings on the very important issue of amnesty. It is my sincere hope that these hearings will lead to a workable bill which will resolve this matter once and for all.

On January 27, 1973, our government signed a peace treaty with the government of North Vietnam ending almost a decade of direct military involvement in Southeast Asia. The wisdom, morality and legality of that involvement is something historians will debate for years to come. Suffice it to say, it was a painful period of reexamination within the United States by scholars, religious leaders, policy-makers and others of our historical role of world policeman and our attitude toward and perception of world Communism.

Now that American military action in Vietnam has ended, it is time to face the problem of what to do with the tens of thousands of young people who manifested their opposition to the war by violating U.S. law. This includes those who failed or refused to register for the draft and to be inducted into the service, those who once in the military were court-martialed, received less-than-honorable discharges for absence offenses or deserted, and civilians convicted of war related protest acts.

The issue of amnesty is not new to the American people. It has been a subject of deep concern following each war since the beginning of the Republic. Indeed, the first amnesty was granted by President Washington following the Whiskey Rebellion in 1795. All told, amnesty has been invoked thirty times by the President and has been the subject of at least four acts of Congress.

Sound policy dictates that we keep three things in mind as we approach the amnesty question.

First, we must base our deliberations in reason—not emotion. The stakes are too high to allow irrationalities to interfere with and distort the decisionmaking process. At issue are the lives of perhaps a million young Americans and their families. From a national standpoint, this represents a substantial resource pool which we can ill afford to lose.

Second, we must not allow the issue to be used by supporters of the war to vindicate their posiiton. These are two separate and distinct issues and any attempt to tie them together will only confuse matters. Such ardent war advocates as former Defense Secretary Melvin Laird and former Army Secretary Robert Froehlke have already expressed their support for a conditional amnesty.

Third, we must remember that we cannot bring back our dead or make whole our injured. It would be a great disservice to those who served bravely if we used their deaths and injuries as a justification for turning our backs on those who chose not to serve for moral reasons. Our policy must look to the future, not to the past.

Application of these tests compel the conculsion that some form of amnesty is warranted. Speculative arguments raised by amnesty opponents, such as its effect on our future ability to wage war, are outweighed by traditional American notions of forgiveness and compassion and the urgent need to heal divisive wounds and put the country back on the road toward internal peace and tranquility.

Accordingly, I propose that Congress create a National Commission on Amnesty. The duties of the Commission would be twofold.

First, it would collect data relating to persons who might be affected by an amnesty grant. As mentioned above, this includes (1) persons who failed or refused to register for, or be inducted into, the service; (2) persons who were court-martialed, received less-than-honorable discharges for absence offenses or who deserted; and (3) persons who were arrested and/or convicted of a crime protesting the war. Statistics are needed on the number of people in each category and subcategory, where they are now and what motivated their actions.

Information of this nature is woefully lacking. One pro-amnesty group, the Safe Return Amnesty Committee, contends that about a million people could be affected by an amnesty declaration. Pentagon estimates are a fraction of this number. In addition, the Pentagon argues that only 5% of Vietnam era desertions were motivated by anti-war feelings. This percentage is hotly contested by amnesty groups. As is true of so many other issues, rational, intelligent decision-making must be based on accurate and comprehensive data.

Second, the Commission would make legislative recommendations to Congress and the Executive. Because this Administration has unequivocally expressed its opposition to any form of amnesty, I submit that the Commission issue its report by January 1, 1976. This would enable a new Congress and possibly a new Administration to look freshly at the question.

In short, amnesty is an issue whose time has come. Our military involvement in Vietnam ended over a year ago. The POW's are safely home and are living normal, productive lives. Only history can judge our actions of the last decade. Let us now bring all our men home so that we may truly have a peace with honor.

STATEMENT OF HON. JOHN P. MURTHA, FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I want to thank the committee for allowing me to testify on the question of general amnesty which is so important to this nation.

I served in Vietnam in 1966–1967 with the First Marines, south of Da Nang. I witnessed many acts of bravery. I saw young men who compare with the finest men in the history of this country doing their duty to the best of their ability.

But I also witnessed frustration. I witnessed a tremendous feeling of insecurity and discouragement because of actions at home and because of the divisiveness of this war.

One tragic example vividly illustrates this frustration. A young Marine company commander in 1967 had finished a tour in the First Marines south of Da Nang. He was scheduled for rotation—but he volunteered to lead his company on one last operation.

During the operation he was wounded but carried on. While talking on the radio, his battalion commander heard a loud explosion and minutes later the captain reported weakly he'd have to give up his company because he'd just lost both his legs.

The next day I visited this young Marine who was awarded the Navy Cross for heroism. He told me he was going back and tell the people what a great job the young men in his company had been doing.

Obviously, the critics, who he never mentioned, had hurt him deeply.

The reason that I tell his story is because I believe it's necessary for the American people to understand how difficult this war was on the young men who fought. There's no question that many of them didn't believe the war was right.

They fought in mud up to their knees and in water up to their waist—they sweat and bled and died, and when they returned some were embarrassed to wear their uniforms, some were ashamed to say they had fought in the jungles and swamps of Southeast Asia.

But they served their country and the men who fought should be praised and lauded.

There's no question they feared dying. Many of them could have stayed home or gone to Canada. But they believed as I did and still do that in this great country we must trust our government to establish the right foreign policy for this country, and we're to follow that foreign policy, perhaps give our lives for it.

Mr. Chairman, some bills before this committee would grant a general amnesty, some would grant amnesty on the condition of honorable service to the country, and others oppose amnesty altogether.

Because the attitude expressed by Congress on this subject will directly influence the future of this country, and because it is an issue personally important to thousands of the men and women I represent, I want to express my views before this committee.

Considering that Vietnam was an extremely unpopular war, America has every reason to be proud of its young people. During the Vietnam conflict 1,800,000 young Americans were involuntarily inducted into the armed services. Millions more volunteered. More than 95 percent of these millions served the country honorably and well. 2,500,000 young Americans were told their country needed them in Vietnam, and they went. There were 46,226 of them who died; 303,654 who were wounded; 759 of them who were captured; and 1,088 of them who are still missing in action. If there is no other good that comes out of Vietnam, there is at least the certain knowledge that the overwhelming majority of young men in this country are as loyal as any who went before them in any previous war.

When we talk about draft evaders and deserters, therefore, we want to keep in mind that we are talking about a comparatively small number. We also want to remember that it has happened before. In all previous wars, as well as during Vietnam, there have been some who would not live up to the obligations of citizenship.

There have actually been about 9,000 trials for draft evasion relating to the Vietnam conflict. Of this number, 1,186 were acquitted, and 7,932 were convicted. Only 134 are now in prison. The sentences have an average range of 18 to 37 months. There remain about 4,400 fugitive warrants issued on men known to have evaded the draft. According to the Department of Defense, no more than 17,000 men, including those who failed to register and remain undetected, are involved in unsettled cases of draft evasion.

While no doubt some men refused to serve in Vietnam because of a genuine, conscientious objection to our involvement there, many more men fled to Canada or Europe simply because they were irresponsible and unwilling to take any risks for their country. Most of the men with genuine conscientious objections stood their ground here in their own country and, in many cases, went to jail to show they had the strength of their convictions. In my mind, those who fled simply took the easy way out, leaving others—others who were better citizens—to take their places in uniform.

It is important to point out that our country has recognized from the beginning the right of an individual to conscientious objection. While for a long time such objections were considered valid only on religious grounds, more recently the basis for objection has been expanded to include other ethical considerations. Even after a man has put on his uniform, he can still make application for status as a conscientious objector. During 1968, for example, when the conflict in Vietnam was at its peak, 1,387 servicemen applied for a status as conscientious objectors. Of these applicants, 724—or more than 52 percent—received approval. In 1971, 4,381 applied. Of these, 2,765—or 63 percent—received approval. Clearly, then, the men facing the draft had alternatives available to them that were within the law even after they put on their uniforms.

For deserters, the problem is essentially the same. It boils down to a shirking of duty to the country. Of the 28,661 deserters at large, studies show that less than three percent would honestly claim conscientious objection as their reason for desertion. Less than four percent would claim they deserted because of an objection to war. Nearly 20 percent—men who enlisted from other countries to gain U.S. citizenship—would say they got cold feet and were not sure they wanted American citizenship enough to fight for it. Another 10 percent are simply men who escaped from confinement for other crimes. The remainder would cite as their reasons family problems at home, inability to take the stresses of military life, and other such things.

Americans are not a cruel or vindictive people. If the draft evaders and deserters turn themselves in for trial, they will find no eye-for-an-eye vengence being inflicted upon them. They will find instead a system of justice that emphasizes, whenever it can, clemency.

For me, and I believe for the people I represent, a grant of general amnesty is out of the question. If we have not paid our men in uniform enough, or not provided our veterans with enough post-war compensation, we have at least always honored them for their service to our country. I will not dishonor them—and their widows and families by voting for or supporting general amnesty.

And Mr. Chairman, I would also ask that these articles which appeared in the Johnstown *Tribune Democrat* recently pertaining to the question of amnesty be included in my remarks.

DANGER IN AMNESTY

(By William S. White)

The pro-amnesty lobby is having a field day in hurling around great blobs of mawkish sentimentality. Draft dodging and even desertion in the face of the enemy ought to be forgiven and in some cases even rewarded.

The deserters and evaders are availing themselves, from their refuge in Canada, of the American TV tube to appeal to the qualities of compassion and forgivingness.

But not all of them are stopping there. Some are demanding that their admitted violations of criminal law be redefined as acts of higher law and a higher morality. They declare their willingness to come home only if the United States apologizes to them.

For them, not even proposals to let them work off their refusal to accept the common duty and the common dangers of their generation by various forms of vague do-goodism are enough.

It is hardly necessary to point to the obvious fact that pseudo-service in some social worker's office cannot be equated with service on any battlefield.

It is therefore difficult to determine which side of this nonsense is more insulting to the young Americans who did the fighting and dying. Which group is more insolent?

Is it the politicians who offer this so-called method of atonement? Or is it the arrogant group of those who wish almost to be canozide for having let some other youngster carry the rifle through the sinks of Vietnam?

At any rate, amnesty has become the fashionable thing in Congress—whose constitutional right to grant it is in any case in grave doubt—for reasons that could not be more glibly appealing or more deeply wrong.

Politicians are moved by a series of total irrelevancies. Was the Vietnam War really right anyhow? Anyhow, do not the young have special immunities from the law?

If a personal decision that a given war is wrong is sufficient to permit a single individual to declare it null and void, what happens to representative government and to the Constitution itself?

If such a precedent is to be set for the young then what is to stop them from reaching an equally personal decision that paying one's taxes is wrong or that obeying any other act of Congress with which they personally disagree is not for them?

But there is a far more realistic point. And this is it:

What happens to the security of this country and to the armed services themselves if every young man is to be allowed to serve or not serve as he may choose, pleading a special sensitivity and a special morality?

How can we depend on even a voluntary Army if Pvt. Jones, Smith or Brown is to be allowed by precedents set now to announce that though he entered the Army on his own he has concluded that a particular war is offensive to his moral sense?

The anti-amnesty people are not motivated by revenge. They see instead fairness in sacrifice, the security of a nation and equal—not unequal—justice under the law.

DON'T GRANT AMNESTY

President Nixon should not grant amnesty to the draft dodgers and the deserters of the Vietnam War.

Neither should the Congress attempt to wrest from the executive branch the power to grant amnesty, though that is the tack currently pursued by some lawmakers.

Certain elements are, furthermore, persuading the Congress to legislatively be the salavation of those who decided not to live up to one of their obligations as Americans when the vast majority of other young men did serve in the military during the Vietnam War.

The New York Times is among those persuasive elements, as is proved by the following words from a Times editorial:

"Ever since President Nixon said categorically more than a year ago that 'we cannot provide forgiveness' for draft resisters and self-exiled opponents of the war in Vietnam, it has been evident that any hope of amnesty rests with Congress. Legislation to create an amnesty board to rule on individual cases is now under consideration in the House."

The Times goes on to say that past examples of forgiveness have not "crippled this country's capacity to defend itself in subsequent conflicts." Mention is also made of the unpopularity of the Vietnam War, and the editorial concludes with the phrase "we should delay no longer in sanctioning a peace with charity."

Some of those who have been advocating amnesty have said that the draft dodgers could perform some sort of public service for a number of years in order to work off their military-duty obligation. That justly may seem like an easy way out for the draft dodgers, especially in the eyes of those who did not dodge the draft.

As for the deserters, those who illegally left the military service after being sworn in, the Pentagon has argued that amnesty "would have a serious detrimental impact on the morale and discipline of our armed forces." It would, for can anyone deny that the deserters broke the law? And if lawbreakers are to go scot-free, it might be reasoned, why should anyone trod civil or military straight-and-narrow paths?

Amnesty is out of the question.

Each draft dodger and each deserter wanting to have his status resolved should have his case heard—on an individual basis and before the courts. A blanket amnesty should not be permitted.

If after an individual has presented his case it is judged that he be permitted to perform some alternative service to his country that would be acceptable. But he must first be tried.

Those who are calling for amnesty have been asking the nation to forgive the transgressions of the dodgers and the deserters. The headline on the aforequoted Times editorial was "We Can Forgive." We, too, can forgive—just as the errors of the past ought to be forgiven for those who have broken the law, have been sentenced and have paid their debt to society: after, not before.

STATEMENT OF HON. TOM BEVILL OF ALABAMA

Mr. Chairman, I want to thank you for this opportunity to express my views on proposals before your committee which would grant amnesty to draft evaders and deserters.

I am opposed to granting amnesty, general or particular. In my opinion, granting amnesty to draft dodgers and deserters would be a gross injustice to those who made such great sacrifices to their country. Such a move would undermine our system of justice because it would reward those who violated our laws and shirked their duty.

To grant amnesty to draft evaders and deserters would invite new violations of military and civil law. It would make it difficult for the military to maintain discipline in possible future conflicts or wars. It would possibly disrupt the effectiveness of our selective service system.

Mr. Chairman, those men who deliberately disobeyed the law and decided to flee the country or resist the draft knew what they were doing. Now, they must fact the consequences of their actions. They deserve their day in court, just as any other citizen who breaks the law. We must not make exceptions for these people.

The majority of amnesties in American history occurred during and after the Civil War. They were deemed necessary as part of the general reconciliation effort between North and South. Because the system of induction was far different then, there is no record of amnesty for draft dodgers, and the amnesty granted to those who served in the Confederacy is in no way parallel to amnesty for draft dodgers today.

America is today, Mr. Chairman, hard pressed to cope with crime and violence. Granting amnesty would only further disrupt our nation and create additional hate and distrust by implying that laws can be safely broken by some citizens.

I respectfully urge the committee to vote down the amnesty bills.

Thank you.

REMARKS OF THE HONORABLE JOHN J. FLYNT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. FLYNT. Mr. Chairman, thank you for the opportunity to appear before your Subcommittee during its consideration of amnesty legislation.

Those clamoring for amnesty for deserters and draft dodgers have now been joined by a former Secretary of the Army, and this has encouraged the pro-amnesty element to renewal effort. The fact of desertion and draft evasion has not changed and will not change. The right and wrong of desertion and draft evasion has not changed and will not change. The necessity for this Country to remain a strong world power has not changed and will not change during our lifetime, the lifetime of our children and of our children's children.

It matters not that an individual may have felt that our massive military involvement in Southeast Asia was a terrible mistake, as I feel and have so stated on the Floor of the House more than once. The matter is more basic to our continuance as a Nation than individual doubts and misgivings about the advisability of the national course of action. If we make it a national policy to forgive these deserters and draft dodgers and enfold them in the national bosom as strayed lambs who have returned to the fold, we can never again call our citizenry to arms with any expectation of creating or maintaining an armed force for the preservation of life, liberty, and the pursuit of happiness nor to protect and enforce the essential interests of our Country when diplomacy has failed.

If we are to survive as a nation, citizens of this Country must meet the responsibilities of citizenship and respect and respond to its laws, with the ever present reality of certain punishment for failure to do so.

To establish a national policy to permit and bless a defiant refusal to obey any law with which an individual disagrees is to guarantee the early demise of the Nation and the certain establishment of anarchy, chaos, and the total loss of individual and collective security.

Mr. KASTENMEIER. The Chair would like to call on the gentlewoman from New York, the Honorable Bella Abzug, who is certainly a leader among our colleagues in terms of the question of amnesty.

We welcome you to the committee, Ms. Abzug, and you may proceed.

TESTIMONY OF HON. BELLA ABZUG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. ABZUG. Thank you, Mr. Chairman. It is my pleasure to appear before you this morning. I wish to compliment the chairman of the committee for holding these hearings. I think it is reflective of the very earnest concern about amnesty which is now taking place in our country.

I am here to discuss amnesty legislation, specifically my own bill, H.R. 236 and H.R. 5191, cosponsored by Representatives John Conyers and Parren Mitchell, as well as H.R. 3100, sponsored by Representative Dellums, as they are all similar bills.

The war in Vietnam is supposedly over. Our prisoners of war have come home. But some 600,000 young Americans are still prisoners of the war system. For their refusal to take part in a war that the public now repudiates, they are prohibited from contributing their talents to our society.

Over 52,000 young men resisted the draft; some 7,000 were classified as felons and some 3,900 await prosecution. Another 32,000 resisted after induction, went AWOL, and are classified as deserters.

Some 30,000 to 50,000 left the country. An astonishing 450,000 Vietnam war veterans received less than honorable discharges for acts that would not be crimes in the civilian world.

These citizens are as much the responsibility of Congress as were the POW's. They, too, are victims of the misguided policy that led us into Vietnam. They and their families have suffered and the Nation has been the loser. The time has come for reconciliation; the time has come for amnesty.

Since our earliest history, this Government has granted amnesty after wars and rebellions at home and abroad. From the Shays and Whiskey Rebellions, through the War of 1812, the Civil War, and the First and Second World Wars, the cessation of hostilities has generally been followed by one or another form of amnesty.

A brief review of these amnesties will illustrate their variety and the numerous instances of separate Presidential or congressional action. During the Civil War period, when Presidents Lincoln and Andrew Johnson were more inclined to forgive the Confederates than were the radical Republican Congresses, congressional action was piecemeal. In 1862, Congress authorized the President to pardon and amnesty those participating in the rebellion; in 1872, Congress reenfranchised many thousands of former rebels; in 1884, Congress removed disabilities of former rebels to serve on juries or hold civil office; in 1896, Congress lifted restrictions on former rebels to allow their appointment to military commissions; in 1898, Congress passed a Universal Amnesty Act removing all disabilities against all former rebels.

Since that time, executive amnesties or pardons have predominated. President Wilson, in 1917, pardoned some political opponents of World War I. President Coolidge, in 1924, remitted citizenship and civil rights to men who had deserted the Armed Forces between the end of World War I hostilities and the formal termination of war in 1921. He called this an amnesty. In 1933, President Franklin Roosevelt granted full pardon to all violators of World War I draft laws and the 1917 Espionage Act. In 1946, President Truman appointed a President's Amnesty Board, headed by Supreme Court Justice Roberts which, acting in the nature of a parole board, considered Selective Service violators on a case-by-case basis. This Board dissolved itself in December 1947. In December 1952, President Truman remitted citizenship and civil rights to all persons convicted of military desertion between the end of World War II and June 25, 1950. No further amnesties or general pardons have since been granted.

Since this history of congressional as well as executive action, the Nixon administration now suggests, in the testimony of the Justice Department before this committee, that Congress may lack the constitutional authority to provide amnesty. Alleging that the President has exclusive power to grant pardons or amnesty to those who have violated Federal laws, it argues that Congress cannot infringe on that authority either by interference with the exercise of his power or by granting amnesties which the President has decided not to grant. This is sheer nonsense.

It is quite clear, both from historical precedent and from a reading of the Constitution, that the authority to provide amnesty is not an exclusive one, but one that may be exercised by the President or the Congress. No one can deny that the President, pursuant to article II,

section 2 of the Constitution, has the authority to grant pardons for offenses against the United States. Some legal scholars have expressed doubts as to whether this grant of power is broad enough to include the grant of complete amnesty, including restoration of citizenship. The President does have power to grant some types of amnesties for violations of Federal laws. The Supreme Court long ago held, however, that this power is not exclusive and does not preclude the Congress from acting in pursuance of its powers. Article I, section 8, clauses 11, 12, 13, and 14 of the Constitution grant Congress the power to declare war, to raise and support armies and navies, and to make rules for the Government and regulation of land and naval forces; clause 18 provides authority to make all laws necessary and proper for carrying out these powers and other powers vested by the Constitution. These are broad grants of authority and have been broadly interpreted by the courts. Can it really be argued that the power to wage war and to prepare for it does not include the further power to deal with the problems of adjustment after hostilities have ceased? Can it be argued that Congress has the power to enact conscription laws and to set penalties for violation of such laws, that it can provide penalties for desertion, but that it cannot revoke those penalties? The power of Congress to define and provide punishment for crimes and offenses when necessary and proper has been universally conceded.

Amnesty, therefore, quite clearly can be granted either by the President or the Congress. It may be that, as I think was argued in the Justice Department brief, once the President has granted an amnesty, the Congress cannot limit its effect. At least one case, *United States* v. *Klein*, has so held. But that involved a congressional attempt to nullify the effect of Executive proclamations, pardons, or amnesties. Chief Justice Chase there stated that "the legislature cannot change the effect of such a pardon any more than the Executive can change a law." This, however, is not what we are attempting to do here. Quite the contrary. There has been no Executive action in this area. Congress is now attempting to fill that void by exercising its legitimate legislative functions, and it should do so promptly.

This committee has under consideration several types of amnesty bills. Our legislation, H.R. 236, H.R. 5195, and H.R. 3100, varies from the others in that it would provide unconditional general amnesty to war resisters and deserters. I cannot argue too strongly against the imposition of any requirements—alternative service, punishment, or a showing of repentance—as a condition for amnesty. The imposition of such conditions can be justified only on the theory that these young men have enjoyed some unfair personal advantage vis-a-vis those who served in the Vietnam war and that they must now serve their time. But these men have already paid a huge price for their exercise of conscience. Having already suffered the hardships of exile, underground existence, imprisonment, or life as an ex-convict, they should not be penalized further for their refusal or inability to support an illegal and unconstitutional war and what many now view as the most immoral war in our history.

I want to share with this committee some very moving testimony I heard during 2 days of ad hoc hearings which I and other Members of Congress held last spring and fall. I remember, specifically, the testimony of a young woman, the wife of a draft resister, who described

their plight now that her husband was out of jail. She told us that because of her husband's criminal record, he could not get a job in his chosen career, teaching, and that they and their small child were forced to live on welfare while she tried to find a job to support them. Has this family paid a severe enough price?

I also recall the testimony of a middle-aged woman from San Francisco whose son was a deserter from the Army, living in Canada. She related how her son enlised in the Army to please his father, who was a career noncommissioned soldier. After his enlistment, the young man had come to the moral conclusion that he could not serve in Vietnam. Rather than live underground, he went to Canada. She had not seen her son in a number of years. Even when her husband was critically ill, her son could not risk returning to the United States. Her son was not even able to attend his father's funeral. Has this family paid a severe enough price?

Faced with the human beings to whom this law would apply, I believe that even former Secretary of the Army Froehlke, former Secretary of Defense Laird, and other advocates of conditional amnesty would see the need to eliminate punitive conditions.

Even Mr. Froehlke suggests, in his testimony before this committee, that convicted draft evaders who have served a prison term should not be required to perform an additional service in order to qualify for amnesty. "Their service in prison should be considered service to this country," he stated in his testimony before this subcommittee. But if a prison term be considered "service" for one's country, why not a fugitive's existence or a period of exile? Is he really talking of service or does he mean punishment? I submit that in just the same way, those who faced self-imposed exile, those who lived precariously "underground," those who cannot find work because of questionable discharges from military service, have suffered enough. So have their families.

They have paid the price for following the moral imperative; Thou shalt not kill. They were among the first to challenge the morality of our acts in Vietnam. They made us think more deeply about what we were doing there. The courage required by this lonely stance is hard to imagine until one has talked, and heard from, as I have, hundreds of such men and their families.

That is why my bill provides for unconditional amnesty. It would also apply to all classes of essentially nonviolent war resisters, including not only draft evaders and deserters but antiwar demonstrators as well. Amnesty would be granted automatically in most instances, but an Amnesty Commission would be established with authority to grant amnesty to violators of other Federal, State, or local laws, if the commission finds that such violations were substantially motivated by opposition to the war and did not result in significant property damage or substantial personal injury.

The amnesty granted under my proposed legislation would be complete and would contravene every legal consequence suffered as a result of war resistance. It would restore all civil, political, citizenship, and property rights. It would immunize persons from criminal prosecution, release those imprisoned and expunge all criminal records. It would also require the Armed Forces to grant an honorable discharge in place of other than honorable discharges.

Other amnesty proposals have suggested automatic amnesty for draft violators but more careful consideration or no consideration at all for deserters. The theory, supposedly, is that the motives of draft evaders are more easily identifiable as conscientious, while the motives of deserters are more diverse or tend to be selfish. This theory is not supported by the facts. I question its relevance, since it is impossible to devise a fair administrative mechanism to identify motives. The records of draft boards and military boards who have ruled on the sincerity of conscientious objectors show that such proceedings are by nature arbitrary and capricious, discriminating flagrantly against those who are less well educated and less articulate in stating their beliefs. In fact, many war resisters, both convicts and fugitives, are themselves conscientious objectors who were unable to convince their draft boards but unwilling to compromise their beliefs. In *Seeger* v. *United States* 380 U.S. 163 (1965), the Supreme Court acknowledged:

> One deals with the beliefs of different individuals who will articulate them in a multitude of ways. * * * Local board and courts * * * are not free to reject beliefs because they consider them "incomprehensible."

What recourse would they have if they failed a second time to establish their sincerity in an arbitrary administrative proceeding? The ineffectiveness, not to mention the injustice, of a case-by-case review board was demonstrated in Truman's President's Amnesty Board of 1946–47. Of the 15,805 resisters considered by this board, only 1,523 were granted amnesty. All Jehovah's Witnesses were refused amnesty. Technically, this review board provided pardon, not amnesty.

More important, however, would be the gross inequity of discriminating between these two groups of war resisters. As we all know, a less restrictive definition of conscientious objector was enunciated by the Supreme Court in 1970. But this was long after many young men had already been refused conscientious objector status. Even after the Court's decision in the *Welsh* case, there were many less educated men who were unable to articulate their beliefs in such a manner as to qualify for conscientious objector status. Many more, I am sure, were not even aware of the Supreme Court's holding or of the procedures to be followed to qualify for such status. Others, feeling an obligation to serve their country, accepted induction but later found it impossible to participate in the immoral war in Vietnam. All, I submit, acted on the basis of their strong moral beliefs. How can we possibly distinguish among them without doing violence to our own principles of justice and equity? We all know that the draft, as administered, was grossly discriminatory—allowing student deferments and providing loopholes for those who knew the ropes. Only by granting a blanket amnesty to all war resisters can we hope to overcome, at least in part, these past inequities and discriminations against the poor, the less well educated, and members of minority groups.

Mr. KASTENMEIER. The Chair dislikes to interrupt the witness, but we have a second call, and I think it will be possible for you to finish your statement at this point.

Ms. ABZUG. No.

Mr. KASTENMEIER. I would like you to either briefly summarize or we will return at 1:30 at which time you can complete your statement, either one. We will be in session in any event at 1:30 because there are other congressional witnesses.

Ms. ABZUG. Well, I really think I should give you the opportunity to hear the rest of my statement.

Mr. KASTENMEIER. In which case, you will be the leadoff witness.

Ms. ABZUG. If it is all right with you, Mr. Chairman.

Mr. KASTENMEIER. Until 1:30 the subcommittee stands in recess.

Ms. ABZUG. Thank you very much.

[Whereupon, at 12:10 p.m., the hearing was recessed, to reconvene at 1:30 p.m. this same day.]

AFTERNOON SESSION

Mr. KASTENMEIER. The committee will come to order.

When the committee recessed for a call of the House this afternoon we were hearing from Congresswoman Abzug, who was testifying. You had just concluded by saying "critics of amnesty are numerous," Ms. Abzug.

Ms. ABZUG. Critics of amnesty are numerous, vocal, and in the main, sincere. Two arguments are most frequently advanced by them to counter the idea of amnesty. First, while few critics attempt to justify the war policy itself, they argue that amnesty for war-resisters would dishonor the sacrifices made by those Americans who fought in Southeast Asia. I do not belittle these sacrifices. On the contrary, I mourn them bitterly and deeply because I deem them to have been purposeless, squandered by the Government for wrongful ends or no ends at all. I am angered and I am sickened when I consider all the tragedies of the war, but I do not direct my anger at those who refused to fight who were themselves victimized. I direct my anger at the responsible parties—the warmakers in our Government. They are the ones who dishonored our soldiers, by using them and wasting them in a corrupt enterprise. If the Government had listened to the draft resister, the demonstrator, and the deserter long ago, many lives would have been saved and much suffering averted.

To make an analogy, when a court system sentences a man to death and later strikes down the law under which he was sentenced, reversal is ordered. The courts do not insist upon the sentence for the sake of consistency or to honor others who were wrongfully executed. In carrying out this war, the Government, in effect, pronounced sentence erroneously against 55,000 young soldiers, against the 300,000 who were maimed, against the whole soul and purpose of the American people as well as the many in Indochina. It is time for the Government to reverse itself now, and not blindly perpetuate this wrong by punishing those who refused to fight.

Furthermore, how can we be so concerned that amnesty would dishonor the veterans and casualties of Vietnam, when many of the veterans themselves are the most active, dedicated opponents of the war, and the most vocal proponents of amnesty? Many veterans, having witnessed the war's consequences, and having now examined its deceptive rationale, have concluded that they should not have fought and would themselves have refused to fight had they been aware of the facts at the time.

A second argument commonly advanced to oppose amnesty is that amnesty now would lead young men of the future to believe that they could shirk their military duties with impunity. Thus, the argument

goes, and we heard it here this morning, in some future national emergency, we would be unable to raise armies. But, as I have pointed out, amnesty measures have followed nearly every major war in our history. Amnesty is an American tradition. And yet history also shows that whenever the country has been in danger, young citizens have responded and sacrificed willingly in combat. In fact, this country never has experienced significant difficulty in raising armies for its real military needs. I have faith in the patriotism of young Americans. I have faith that they would rise to defend this country if a national emergency really required it. But I also have faith in their ability to think for themselves, to distinguish right from wrong where their Government's policies are concerned, and to have the courage to resist official policies when they are manifestly immoral.

For these reasons, I reject the contentions of those who would deny amnesty. I submit, to the contrary, that a broad amnesty measure would honor us as a nation and serve our most vital national interests. It would heal at least some of the wounds remaining from this immoral war and would enable us—as a nation—to utilize one of our most valuable resources, the thousands of young men and women lost to self-imposed exile.

For the first time in our history, a significant segment of our young people—together with their families—have found it necessary to live abroad. A major purpose of my amnesty measure must be to bring these exiles home, so they can lend their energies to rebuilding the Nation, to effecting the changes we need, and to working within the political structure to insure that we will have no more Vietnams. No measure short of unconditional, universal amnesty such as I have proposed here will bring these men home.

They reject the concept of amnesty for some and not others and they reject the idea of alternative service. All those to whom I have spoken or written ask the same question in various ways, "If the war was criminal and we refused to commit the crime, why should we be punished?"

I join with war resisters in rejecting the tokenism inherent in other proposals for less than total, blanket amnesty.

Amnesty is not only a legal question, it is a moral one. It is the morality of the issue which caused millions of Americans to question the war, and it is the morality of the issue that has caused many of the leading religious institutions to raise their voices in favor of amnesty.

The Protestant Episcopal Church of the United States, in the fall of 1973, passed the following resolution:

> Whereas, American society must proceed to heal the wound at home and abroad caused by the War in Indochina and to reconcile all people in peace * * * Resolved, that the House of Deputies concurring, that this Convention calls upon diocese and parishes of this church to include in their Christian education and social concerns program a serious consideration of the question of amnesty and the needs of returning veterans.

In November last year, the Biennial General Assembly of the Union of American Hebrew Congregations passed the following:

> Based on the Jewish religious concerns to reconcile generation with generation, person to person and in consonance with the prophetic cry of Malachi: to turn the hearts of the parents to the children and the hearts of the children to the parents, it is our considered judgment that the first way to effect this healing

process is by Congress granting amnesty to those young men who found, early or late, that they could not participate in the war and went to prison, resisted or deserted. As we make peace with our enemies let us also make peace with these, our youth.

With full respect for those who chose to serve and those who sacrificed so much for their country, we call upon Congress to grant unconditional amnesty as an act of reconcilation and compassion that can help speedily reunite the American people for the key task of justice and peace which lie ahead.

I would also like to note that the U.S. Catholic Conference has adopted a position favoring unconditional, universal amnesty. They said:

Who should be granted amnesty?

First, those young men who were subject to the draft but whose informed conscience led them to oppose participation in the Vietnam war, even though they could not say in conscience that they were opposed to all use of military force. These selective conscientious objectors are now serving prison terms.

We do not believe any useful purpose is served at this time by continuing the incarceration in federal prisons of these young men whose consciences instructed them not to engage in the killing and dying in the Vietnam war * * *

Secondly, we also recognize that an additional group of young men are in a somewhat similar position, that is, men in military service, who for reasons of their consciences were compelled to refuse to serve in the war and who were imprisoned or given less than honorable discharges. Here again the complicating impact of selective conscientious objection upon the structures of military law is evident. However, we do not believe that the individual forfeits his right to exercise the dictates of his conscience once he enters the ranks of the military, or, for that matter, any other form of employment. The request for amnesty for selective conscientious objectors in federal prisons, therefore, should also be extended similarly to men in military jails.

Thirdly, there is the group of young men who have left the country or who have remained in the country as fugitives from the law because they felt compelled to follow their consciences rather than the law. Certainly their experiences of sufferings and separations have been trying for them personally as well as for their families and friends. We again urge officials and all Americans to respond to their conspicuous need to find a solution to the problems of these men through the reconciling work of amnesty.

I would also like to relate to the committee testimony I heard from Eddie Sowders. Mr. Sowders was a deserter who turned himself back to military control after testifying at the ad hoc hearings that I and other Members of Congress conducted in May 1973.

Mr. Sowders related what he had seen and done in Vietnam and how this led to his decision to leave the Army. He told of what it was like to live "underground" in the United States, moving from one low-paying job to another, sometimes going hungry. But, as he told me and the other Members of Congress at the hearing:

I make no apology for my act of resistance. I could do nothing else at the time.

He concluded his statement by saying:

Only by winning a universal, unconditional amnesty for all categories of war resisters can we begin the long process of changing our country and learning from the decade of blood and bitterness in Indochina.

When the Civil War ended, America tried no Confererate soldiers for treason, sent no one who had opposed the Union into exile, sent none of the officers and officials of the Confederacy to prison. Is it too much to ask that we in the 20th century, more than a year after we acted to conclude the longest war in our history, do the same for those who by their courage and the strength of their convictions showed many of us the wrongess of the war in Vietnam? This would go a long

way to restoring the faith of our young—in fact of all our people—in our Nation's past and future.

Mr. KASTENMEIER. I would like to congratulate my colleague on a very excellent and eloquent statement. How many other members have joined in the cosponsorship of the legislation?

Ms. ABZUG. Well, we have three cosponsors.

Mr. KASTENMEIER. There are four of you, you and three others?

Ms. ABZUG. The Dellums bill is the same bill.

Mr. Chairman, I have some petitions which I would like to present to the committee, which contain 20,000 signatures collected across the Nation by two organizations. Women Strike for Peace and the War Resisters' League, in support of the unconditional amnesty bill on which I have testified today. These are two organizations, as I believe the committee knows, that have been in the leadership in the struggle in this country to make clear the nature of this war from its outset. I think their leadership and their understanding of the moral and legal issues involved, both in the nature of the war and in the necessity to restore faith in this Nation by an amnesty proposal such as this, is something that the committee and the Congress should give consideration to. And I would like to present these petitions to the committee since I feel it would add to our record.

Mr. KASTENMEIER. Without objection we will take due note of the fact and receive the petitions from the War Resisters' League and from the——

Ms. ABZUG. Women Strike for Peace.

Mr. KASTENMEIER. Women Strike for Peace consisting of 20,000 names.

[The petitions referred to are in the files of the subcommittee.]

Does the gentleman from Massachusetts have any questions?

Mr. DRINAN. I want to congratulate my colleague for this fine and excellent statement. I have just one question, Mr. Chairman, and that is to the impact of the first part of your bill.

It has been discussed here by Mr. Joseph Rauh and one or two others. I wonder if somehow we have to go back to the military for a resolution of the question, for example on section 3, No. 4, that on the honorable discharge, if a person can get an honorable discharge, if the violation of the particular statute was solely the cause for substantial cause of the granting of the other-than-honorable discharge. In other words, are you going to allow the military tribunals to carry that forward or is there remedy for that person to go before some other tribunal?,

Ms. ABZUG. Well, as you know, we believe that they should, as we indicate in the bill, have only honorable discharges. In the event that an individual is aggrieved by the refusal of a military board to grant an honorable discharge to him under section 3, No. 4 of this act, then we provide for the Amnesty Commission, which we have set up in this bill, to have jurisdiction to hear and determine applications for such individuals.

Mr. DRINAN. Despite the fact that the whole first part of it is automatic, I am wondering how many thousands of cases of less-than-honorable discharges would in fact have to appeal to this Amnesty Commission? A lot of these young people wouldn't even have heard about it and wouldn't have the resources to go to it. I wonder if you

thought about making it so automatic that they don't have to go through this test, so to speak?

Ms. ABZUG. The bill itself provides for automatic amnesty under those conditions, but in taking into consideration the reality that they may not get it, we have provided for another right in addition to our providing for that automatic amnesty.

Mr. DRINAN. All right, thank you very much.

Mr. KASTENMEIER. The committee appreciates your work on this. You in fact have conducted earlier hearings, I believe?

Ms. ABZUG. Ad hoc hearings.

Mr. KASTENMEIER. Last year on the question of amnesty?

Ms. ABZUG. Yes, I did. But I do want especially to thank the chairman for holding these hearings. I think that we held ad hoc hearings at a time when there was perhaps less support for the whole issue of amnesty. I think support has been growing and I think that the leadership demonstrated by the Chairman and this subcommittee by holding these hearings is very significant. I think it is highly indicative of what is needed today, and that is up to the Members of the Congress, to the leaders in Congress, to show the way and to initiate the opportunity for changing our directions. We have been misdirected in many instances, particularly in everything relating to this war. And I appreciate your being interested in the concerns and the plight of the victims of this war which have been so unattended by the Congress and the Nation. I think you are to be highly complimented and I believe that this will move us on to a further stage in which the Congress will follow this kind of leadership in enacting appropriate amnesty legislation.

Mr. KASTENMEIER. We hope so. Thank you.

Now the Chair would like to call Hon Edward Koch, Congressman from New York, who also has had a long interest in the question of amnesty and is an old and valued friend.

TESTIMONY OF HON. EDWARD I. KOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KOCH. Mr. Chairman, I first would like to introduce my legislative assistant, Robert Weiner, who has joined me at the table and who has worked very hard in the preparation of the formal statement that will be submitted.

I should like, with your permission, to file my formal statement with various exhibits and then to highlight what I think would be most appropriate from the formal statement in my remarks this morning.

Mr. KASTENMEIER. Without objection your statement and the exhibits will be received and will be printed in the record in their entirety together with an appendix consisting of some other factual material in connection with your statement.

[The statement of Edward Koch, together with the appendix, follows:]

STATEMENT OF REP. EDWARD I. KOCH

Mr. Chairman, I am pleased to be able to testify here today on the subject of amnesty.

As you know, I have introduced legislation on this matter in this and the previous congress, and I am particularly gratified that these hearings are occur-

ring. Perhaps through the airing of many sides of the issue, we can bring *all* Americans home from the most tragic war in our history.

The dimensions of the problem are staggering. As early as December, 1971, the *New York Times* estimated that 70,000 to 100,000 young people could face prosecution for violation of military law or the Selective Service Code. The number now is even greater.

Here's how the numbers break down:

From August, 1964, the beginning of the Vietnam War as defined in the U.S. Code, through July, 1973, over 19,000 young people have been prosecuted for violation of the Selective Service Code—i.e., draft evasion. Of these, nearly 8,000 were convicted, and 5,300 went to jail. 3,900 were placed on probation. (See tables.)

This is only the surface of the number of draft resisters. There is an unexplained 4% difference between the live male births of 1953 and 1954 and the number of draft registrants in 1971 and 1972. Of course, everyone did not actually serve, but all eighteen year-old men were required to register. The death rate would diminish the unaccounted-for difference slightly, and immigration would increase it. Yet as Mr. Samiel Shaw, Legislative Liaison for the Selective Service System, acknowledged in a recent telephone conversation with my office, "There may be a bunch of people that didn't register, but how do we know?"

Therefore, apparently, there are thousands of fugitives from justice in or outside the United States. *Every one of these young people is legally subject to five years in jail, a fine of ten thousand dollars, a felony charge, and loss of the right to vote.*

Most of those who did not register will never be prosecuted because the Selective Service System does not even know who they are.

This is far from an equitable system. Some are free while those who left this country or stood prosecution, some because of their beliefs, others perhaps for less valid reasons, are now separated from their families, friends, and nation, and their family, friends, and nation from them. As *Time* Magazine noted, these are "The Men Who Cannot Come Home". Or as one draft counseling organization described the exiles, they live in "limbo".

I traveled to Canada in 1969, spoke with draft exiles in Toronto, Montreal, and Ottawa, and found at that time that many wanted to return. I believe the number is even greater today.

They are now unable to do so without fear of jail sentences.

Those who left are fugitives. Those who remained are convicted or leading underground lives in our society.

Is this how to heal the wounds of the nation after the most bitter internal ideological struggle we have had in over one hundred years? Just think of what we have made—justifiably—of the fact that the Soviet Union exiled one brilliant dissident writer from their country. How does it look to the rest of the world that America has developed an entire class of political exiles?

The Vietnam War was the first time in American history that a majority of the American people eventually opposed our taking part in a war once we were in it. The war created literally millions of active political workers who successfully began the trend that brought the Congress to action. They lobbied for legislation which we finally passed. They held meetings and called them marches and sit-ins. They organized drives for petitions that we began to read. After all, as Daniel Webster asked during the War of 1812, "Where is it written in the Constitution that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it?"

But are we prosecuting the war protesters? No, of course not—at least not any more. But those who were young enough and unlucky enough to be drafted, who then protested—dissent from *this* group we will not tolerate. *They* cannot vote. *They* cannot have full citizenship. *They* cannot return to this country which they may have even tried to help before they felt they had to leave.

Congress is behind the times. As early as November 7, 1972, the Gallup poll conducted for *Newsweek* showed that 71% of the American people favored either unconditional or conditional amnesty, with 22% opposed and 7% who didn't know. A Gallup poll of February, 1973 shows 78% in favor of either form of amnesty. As the war grows further and further from our minds, more people are willing to heal the wounds.

Since 1969, more and more American religious organizations have adopted official positions endorsing amnesty for persons who would not serve during the war. Here is a partial list: The American Baptists, The American Friends Service Committee, The Disciples of Christ, The Christian Reformed Church, The Church of the Brethren, Clergy and Laity Concerned, The House of the Bishops of the Episcopal Church, Fellowship of Reconciliation, The Interreligious Conference on Amnesty, The American Jewish Congress, The National Federation of Temple Sisterhoods, The Union of American Hebrew Congregations, U.S. Lutheran Council, The Old Mennonite Church, The National Council of Churches of Christ, The National Conference of Catholic Bishops, The Southern Christian Leadership Conference, The United Church of Christ, The United Methodist Church, and The United Presbyterian Church in the U.S.A.

Both the President and the Congress have the power to grant amnesty. Article II, Section 2 of the Constitution gives the President the "power to grant reprieves and pardons for offenses against the United States" and nowhere precludes congressional action. In *Ex Parte* Garland (1866), the Supreme Court ruled that presidential amnesty "extends to every offense known to the law, and may be exercised at any time either before legal proceedings are taken, or during their pendency, or after conviction." As for congressional amnesty, there are no grounds or precedent for a ruling as unconstitutional. In fact, the Congress has the power "To make rules for the government and regulation of the land and naval forces, . . . to provide for organizing, arming, and disciplining the militia, . . . and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof" (Article I, Section 8).

Yet the problem of authority may be far less complicated. My proposed conditional amnesty legislation, as an Act of Congress, would be signed by the President. Only in the event of the need for and success in overriding a veto might the question even arise.

There are those who say that granting amnesty would weaken our country's future military policy by serving as precedent for future violators. Yet George Washington, who demonstrated a clear sense of America's proper direction by refusing the offer of Kingship, must not have feared precedent when he granted amnesty after the Wiskey Rebellion in 1794. Nor did Andrew Johnson fear precedent when he granted amnesty to deserters and opponents after the Civil War, conditional upon signing an oath of allegiance to the United States. In Johnson's own words from his 1868 Proclamation, "A universal amnesty and pardon . . . will tend to secure permanent peace, order, and prosperity throughout the land and to renew and fully restore confidence . . . among the whole people, and their respect for and attachment to the national government." Nor did Theodore Roosevelt, Woodrow Wilson, Calvin Coolidge, Franklin Roosevelt, or Harry Truman fear precedent when each of them granted amnesty in some form.

In fact, there have been thirty-four instances of amnesty in some form in American history, restoring citizenship and full rights to many thousands of Americans.

After World War II, France, Norway, Germany, Belgium, Japan, and the Netherlands granted amnesty to persons who had engaged in "compromising" wartime activity. After the way we appeared to most other nations by the end of the Vietnam war—let's face it!—amnesty would be a signal to the world that we are again leaders, not followers.

In 1969 and each session of congress thereafter, I introduced legislation (HR 2034) granting conscientious objector status retroactively to persons who refused induction because of the special nature of the Vietnam war, but whose refusal would not extend to all wars. This legislation recognized the grave implications of our involvement in Southeast Asia. Unfortunately, the Selective Conscientious Objector bills were not adopted. Had they been, we would not be in this mess today. I also believe as John Kennedy did when he said, "War will exist until the distant day when the Conscientious Objector enjoys the same reputation and prestige as the warrior does today."

Let me now comment on my amnesty legislation which I hope you will consider carefully in order to report a bill to your full committee and to the floor of the House.

HR 674 restates the President's authority to grant amnesty and urges him to set up the mechanism to do so. This could be, but would not have to be, similar to the amnesty board which Harry Truman established after World War II and

which granted amnesty on an individual basis to 1500 men. However, I am hopeful that any such current board or tribunal, or the President himself, would be far more broad-minded than the earlier board. Only one-tenth of those eligible were pardoned. Whereas World War II was more and more accepted by the American people as the facts became clear, precisely the opposite was true for Vietnam. The facts served only to mobilize people against this war.

HR 675 would grant amnesty, conditional upon two years of alternative service, to all persons who refused induction during the Vietnam War, whether they are currently imprisoned, released, or in foreign countries. Those who already served or are serving prison sentences can receive up to one year's credit toward this national service. He may serve either in the military, or in Action, a Veteran's Administration or Public Health Service hospital, or some similarly approved position. He would serve at the same pay scale as he would have as a conscientious objector.

If he carries out these provisions, he will receive amnesty with a restoration of all citizenship rights. Administration will be carried out by the Attorney General's office.

Former Secretary of the Army, Robert F. Froehlke, was quoted in the February 26 *Congressional Record* as favoring an amnesty plan which is "not vindictive", but in which those who left must perform some national service. Former Defense Secretary Melvin Laird has issued a similar statement. But in Froehlke's opinion, even three months of such service could be sufficient if worthwhile duties are accomplished in that amount of time—showing the change in attitude on the part of so many who formerly opposed amnesty in any form.

I am aware that it is unrealistic to project the Congress now passing legislation with a three-month alternative service requirement, or no requirement, as has been proposed by some of my colleagues. If such a bill were to come to the floor I would vote for it. I offer this bill, with a two-year requirement, as a proposal which takes into consideration the feelings of the country at this time, which is a desire to come together after a divisive episode in our history.

You are well aware of the diminishing esteem citizens have for the presidency, the Congress, and the government as a whole. The granting of amnesty would be a symbol of strength by a democratic government, indicating our ability to welcome all who want to take part in the post-Vietnam era.

Our national policy has been inconsistent at best. The President sent Secretary of State Henry Kissinger to North Vietnam to negotiate economic reconstruction aid. If we can consider assisting the very nation with which we engaged in combat, resulting in the death of fifty-five thousand of our men, do we not have the compassion to forgive our *own* men who are still alive and desire to return to the U.S.?

We insisted in the Nuremburg war trials that it was an individual's obligation to reject immoral orders. The United States prides itself on its capacity for allowing dissent in our democratic form of government.

Are we not a humane, compassionate people? Especially after a war where many of our own preconditions concerning foreign policy changed, do we not have the ability to forgive?

I would like to submit the following materials for the record: *New York Times* Editorial, February 13, 1974; National Interreligious Service Board Amnesty Fact Sheet and Visual Aids; Live Male Births, 1953 and 1954, and Draft Registrants, 1971 and 1972; Selective Service Systems Complaints to United States Attorneys; Selective Service System prosecutions, etc., 1945–73; *Religious Statements on Amnesty*, compiled by the National Interreligious Service Board for Conscientious Objectors: A List of Amnesties in American History, 1795 to Date.

RECENT POLLS ON AMNESTY

In a Gallup poll of March 5, 1973, a total of 78% of the respondents wanted to allow draft resisters to return to the United States, either unconditionally or with certain prerequisites. The breakdown was as follows:

	Percent
Favor unconditional amnesty	29
Require military service	18
Require nonmilitary service	10
Require either military or nonmilitary service	18
Require payment of fine	3
Total that would allow draft resisters to return	78

In addition, 10% wanted to require a jail sentence, and another 10% of those polled had no opinion. Only 12% would not allow draft resisters to return under any circumstances.

A recent (March 4, 1974) Harris poll confirmed these results. A plurality of respondents (45% to 43%, with 12% undecided) supported amnesty with a requirement of two years of alternative, non-military, national service upon the resister's return home. In a telephone conversation with my office, the Harris national organization acknowledged that if persons who wanted amnesty without *any* service requirement had been included in the number of those favoring amnesty (with the service requirement, such persons said they opposed the amnesty described), the percentage of respondents favoring amnesty would have been even greater.

PROSECUTIONS ETC. FOR SELECTIVE SERVICE VIOLATIONS, 1945-73

Year	Prosecuted	Convicted	Not convicted	Imprisoned	Probation
1973	3,496	977	2,519	260	707
1972	4,906	1,642	3,264	458	1,178
1971	2,973	1,036	1,937	877	650
1970	2,833	1,027	1,806	450	572
1969	1,744	900	844	544	350
1968	1,192	784	408	580	202
1967	996	748	248	566	78
1966	516	371	145	301	64
1965	341	242	99	189	52
1964	276	206	70	149	59
Total, Vietnam era	19,273	7,933	11,340	4,371	3,912
1960	239	166	73	126	37
1950	449	175	274	109	65
1949	506	292	214	213	73
1948	833	304	529	212	84
1945	4,287	2,838	1,449	2,368	453

Source: Telephone conversation Feb. 26, 1974, between office of Congressman Edward I. Koch and Mr. James McCafferty, Chief, Operations Branch, Division Information System, Administrative Office of U.S. Court.

Live male births and draft registrants

Live male births, 1953	2,034,000
Draft registrants, 1971	1,990,234
Difference	43,766
Live male births, 1954	2,090,000
Draft registrants, 1972	1,977,720
Difference	112,280

(Sources: National Center for Health Statistics of the Dept. of Health, Education, and Welfare, and public record of the Selective Service System.)

Complaints reported to U.S. attorneys by the Selective Service System

1967	19,774
1968	21,332
1969	27,389
1970	26,214
1971	26,417
1972	22,104
1973	16,575

(Sources: Letter from Robert C. Mardian, Assistant Attorney General, to Cong. Edward I. Koch, January 31, 1972; also, 1973 U.S. Attorneys' offices Fiscal Report, Dept. of Justice, page 3.)

[From the New York Times, Nov. 27, 1971]

ABOUT THOSE EXILES

(By Edward I. Koch)

WASHINGTON.—In a recent column on this page, Roger Williams, currently "in exile," stridently demanded as conditions of returning home, first, punishment of American political leaders and then an official apology to those, like himself, who left this country to avoid military service. Mr. Williams was among some forty exiles I met in Canada in December 1969. I thought and said then that we should face up to the problem, controversial and painful as it may be. With the war dragging on, but hopefully closer to an end, I think it even more important to encourage discussion of this tender subject by reasonable men and women.

Mr. Williams is not, however, a reasonable man. It seems quite clear that Mr. Williams speaks for only a tiny minority of those who resisted personal involvement in an immoral war by choosing to flee from their country and violate its laws. The great majority of these men—now numbering between 20,000 to 60,000, the estimates vary considerably—truly love the United States. They want to come home and take their places among their families and countrymen.

This problem should be resolved as soon as American troops are no longer fighting in Vietnam. Otherwise for more than a generation to come there will be bitterness, unhappiness and family tragedy. There are difficult issues of public policy, philosophy and fairness involved. The legitimate feelings of those who served in Vietnam, many of whom opposed the war, and the families of those who lost their lives there and in other wars cannot be ignored. Nevertheless, the problem can be approached constructively if the following premises are accepted.

First, we should eschew the juvenile shibboleths and rhetoric of the extremists on both left and right—those that espouse Williams' views that America should apologize to the exiles and invite them back as liberators and also those who consider all these men indiscriminately as despicable traitors.

Second, we should accept as an ultimate goal the return of the great majority of these young men and their speedy reintegration into American life.

Third, we should recognize that they are neither heroes nor traitors. They are simply young people who broke the law for a variety of motives—some selfish, most idealistic. Although many Americans may not find their conduct justifiable, it is at least to some degree explainable by the great moral, social and political transformations we have all witnessed these last few years.

Fourth, these young people, having broken the law, must face some penalty. But what penalty? We know enough about our system of criminal justice to recognize how counter-productive and how irrational it would be to impose jail terms on them. Jail would only brutalize or break them. Besides, it is not really a solution since it is an option presently available to them and obviously not one that will bring them back.

We can make progress on this subject by concentrating on the question of what new options should be made available in order to bring these men home. Prison is not a realistic option but some lesser penalty might be acceptable to them and to most Americans in a post-Vietnam era. For example, they might be given the option of working for a year or two in VISTA or at some other public service job. Such an obligation, together with the discomfort of years in exile, would in my view be more than an adequate penalty. But, it would be a penalty with a purpose. And it would be consistent with America's tradition of magnanimity at the end of hostilities. Indeed, after the Civil War we granted an immediate amnesty to all who fought against their own countrymen.

Let us reach out to all the victims of this monstrous war—the imprisoned, the bereaved, the wounded, the jobless, and those young men in self-imposed exile.

[From the New York Times, Feb. 18, 1974]

THE PARDONING PRESIDENT

President Lincoln's generosity of spirit can be found most notably in his treatment of Confederate prisoners and Union deserters. He took his role as Com-

mander in Chief seriously, yet even during the war's fury bent military rules to save lives and rehabilitate men. In messages to Congress and the people, he pointed out that his proclamation of amnesty was "amply justified by the Constitution."

With one pen he signed orders for new draft calls; with another he spared the lives of young men who, for one reason or another, refused to fight for their country or even ran off the field of battle. If there was a contradiction here that displeased Lincoln's generals, it was a contradiction in which the heart triumphed.

Punishment and false patriotism were not to be assigned to his name. To Secretary of War Stanton he wrote: "Regarding the fourteen-year-old sentenced to be shot for desertion, let us instead pardon this drummer boy and send him back home." To General Sheridan he telegraphed: "Suspend execution of death sentence and forward record of trial to me for examination. If a man had more than one life, I think a little hanging would not hurt this one, but as he has only one I believe I will pardon him."

Today, more than a year after the end of the military (though not financial) presence of Americans in Vietnam, after a war that many in Congress and the country considered unconstitutional, there are still tens of thousands of citizens who are being punished without trial by a vindictive Administration. These include draft resisters who are in prison or underground in their own country; deserters living in Canada or Europe who are afraid to come home; veterans with less than honorable discharges because of antiwar activities who cannot get an education or a job. And to these must be added their anguished parents, wives and children.

Lincoln's Birthday and the days that follow provide occasion for the Federal Government to show the same spirit of détente toward American war resisters that Washington is showing toward foreign governments whose weapons were aimed, not long ago, at American men under arms. To overlook these Americans, who are twisting in the wind of vengeance, is to perpetuate the divisions caused by the Vietnam war.

The pardoning sixteenth President called those in need of amnesty what they still are today, "neighbors and neighbors' sons."

NATIONAL INTERRELIGIOUS SERVICE BOARD FOR CONSCIENTIOUS OBJECTORS

NISBCO'S AMNESTY FACT SHEET

Resistance to draft

Violations of the Military Selective Service Act *reported* to the Department of Justice, 1962 through January 1973: 215,000+. [Source: *General Counsel, Selective Service System; Department of Justice.*]

Men *indicted* for violations of the MSSA from July 1964 through January 1973: 23,414. [Source: *Justice Department; Selective Service Law Reporter.*]

Men *convicted* for violations of the MSSA, July 1964 through June 1973: 7,720. [Source: *Administrative Office of the United States Courts.*]

3,826 of those convicted have been *imprisoned*, with sentences up to five years. [Source: *Administrative Office, U.S. Courts.*]

136 of these men are still *in prison*, as of November 1973. [Source: *Bureau of Prison.*]

Pending violations of the MSSA in June 1973: 11,033. [Source: *General Counsel, SSS.*]

5,576 are currently *under indictment* (about 4,800 of these are fugitives).

5,457 reported violations are *being processed* to indictment.

Exiles

Total U.S. males age 15 to 29 granted landed immigrant status in Canada from 1964 to 1971: 27,543. [Source: *Canadian Department of Manpower and Immigration.*] AMEX-Canada, published by Americans exiled in Canada, estimates that 12,639 of these are war resisters.

Estimates of the total number of American exiles in Canada: 15,000 to 54,000. [Source: *AMEX-Canada, SSLR, Canadian Manpower and Immigration.*]

CONVICTIONS FOR VIOLATIONS OF SELECTIVE SERVICE ACTS

SOURCE: *Administrative Office, United States Courts*

US MALES AGE 15-25 GRANTED LANDED IMMIGRANT STATUS IN CANADA

SOURCE: *Canadian Department of Manpower & Immigration*

NISBCO's Amnesty Information Service

A list of amnesties in American history, 1795 to date

In this table amnesty is broadly defined to permit inclusion of several actions by the Executive that should properly be considered "pardons" as well as legislative actions by Congress.

The amnesties in American history, including date, issued by, persons affected and nature of action:

July 10, 1795, Washington, Whiskey insurrectionists (several hundred). General pardon to all who agreed to thereafter obey the law.

May 21, 1800, Adams, Pennsylvania insurrectionists. Prosecution of participants ended. Pardon not extended to those indicted or convicted.

October 15, 1807, Jefferson, Deserters given full pardon if they surrendered within 4 months.

February 7, 1812, October 8, 1812, July 14, 1814, Madison, Deserters—3 proclamations. Given full pardon if they surrendered within 4 months.

February 6, 1815, Madison, Pirates who fought in War of 1812 pardoned of all previous acts of piracy for which any suits, indictments or prosecutions were initiated.

June 12, 1830, Jackson (War Department), Deserters, with provisions: (1) those in confinement returned to duty; (2) those at large under sentence of death discharged, never again to be enlisted.

February 14, 1862, Lincoln (War Department), Political prisoners paroled.

July 17, 1862 (Confiscation Act) Congress, President authorized to extend pardon and amnesty to rebels.

March 10, 1863, Lincoln, Deserters restored to regiments without punishment, except forfeiture of pay during absence.

December 8, 1863, Lincoln, Full pardon to all implicated in or participating in the "existing rebellion" with exceptions and subject to oath.

February 26, 1864, Lincoln (War Department), Deserters' sentences mitigated, some restored to duty.

March 26, 1864, Lincoln, Certain rebels (clarification of Dec. 8, 1863, proclamation).

March 3, 1865, Congress, Desertion punished by forfeiture of citizenship, President to pardon all who return within 60 days.

March 11, 1865, Lincoln, Deserters who returned to post in 60 days as required by Congress.

May 29, 1865, Johnson, Certain rebels of Confederate States (qualified).

July 3, 1866, Johnson (War Department), Deserters returned to duty without punishment except forfeiture of pay.

January 21, 1867, Congress, Section 13 of Confiscation Act (authority of President to grant pardon and amnesty) repealed.

September 7, 1867, Johnson, Rebels—additional amnesty including all but certain officers of the Confederacy on condition of an oath.

July 4 1868, Johnson, Full pardon to all participants in "the late rebellion" except those indicated for treason or felony.

December 25, 1868, Johnson, All rebels of Confederate States (universal and unconditional).

May 23, 1872, Congress, General amnesty law reenfranchised many thousands of former rebels.

May 24, 1884, Congress, Lifted restrictions on former rebels to allow jury duty and civil office.

January 4, 1893, Harrison, Mormons—liability for polygamy amnestied.

September 25, 1894, Cleveland, Mormons—in accord with above.

March, 1896, Congress, Lifted restrictions on former rebels to allow appointment to military commissions.

June 8, 1893, Congress, Universal Amnesty Act removed all disabilities against all former rebels.

July 4, 1902, T. Roosevelt, Philippine insurrectionists. Full pardon and amnesty to all who took an oath recognizing "the supreme authority of the United States of America in the Philippine Islands."

June 14, 1917, Wilson, 5,000 persons under suspended sentence because of change in law (not war related).

August 21, 1917, Wilson, Clarification of June 14, 1917 proclamation.

March 5, 1924, Coolidge, More than 100 deserters—as to loss of citizenship for those deserting since World War I armistice.

December 23, 1933, F. Roosevelt, 1,500 convicted of having violated espionage or draft laws (World War 1) who have completed their sentences.

December 24, 1945, Truman, Several thousand ex-convicts who had served in World War II for at least 1 year.

December 23, 1947, Truman, 1,523 individual pardons for draft evasion in World War II, based on recommendations of President's Amnsty Board.

December 24, 1950, Truman, Ex-convicts who served in Armed Forces not less than 1 year after June 25, 1950.

December 24, 1952, Truman, All persons convicted for having deserted between August 19, 1948 and June 25, 1950.

Sources: John C. Etridge, Foreign Affairs Analyst, Foreign Affairs Division, Library of Congress.

Mr. KOCH. Thank you. Mr. Chairman and members of the committee. Before I proceed with my testimony on the subject of amnesty, I would like to comment on General Benade's statement concerning SPN numbers. Although this committee unfortunately does not have jurisdiction over SPN's, the subject matter is peripheral to our discussion of amnesty. I have introduced legislation, which is before the Armed Services Committee to remove the SPN numbers from discharge papers and I would like to bring some material to the attention of the committee because of some misinformation that may have been inadvertently provided by the general.

First, Separation Program Numbers—SPN—were first used in 1955 so those of us who served prior to that time did not have SPN's appear on our discharge papers. Somehow or other the Army was able to get along all those years without using SPN numbers.

For the past year I have had a good deal of correspondence with General Benade, reams of correspondence in fact, to ascertain the reasons for SPN numbers. The response always was that the SPN number is a classified number so to speak. It is not available to the public. It is not intended for the public. It is intended to provide the Armed Forces with information, which they would use in deciding whether or not to accept an applicant's request for reenlistment.

Never did the general respond to my inquiries as to why the information could not be simply maintained in files, which were available to all of the services, and not be used on a discharge paper.

The committee should also know that the Air Force in a confidential report prepared for the armed services discussing this issue said that they were opposed to the use of SPN numbers. So the use of SPN's is not unanimous with respect to their need or their use by the armed services.

What is particularly distressing about the use of SPN numbers is that they are available to a prospective employer. They are a matter of public knowledge. As the general admitted, there can be an adverse SPN number on an honorable discharge as well as an administrative discharge and a dishonorable discharge.

When General Benade was apprised of the ready availability of SPN numbers to employers and the public at large, he said, "Well, we are going to issue new numbers." And the moment those new numbers come out, they will again be available to any enterprising employer who wants to use them.

As I have said, the SPN's serve no purpose. Implicitly the general was admitting that when he said "Well, we want someone who served

without blemish to be able to produce something that will attest to that." In effect, what he is saying is with a SPN number on there, that may be helpful to him.

What the general is doing is really punishing people who have honorable discharges, and administrative discharges, which are not desirable. In addition, those who have dishonorable discharges, and who already have suffered a good deal because of that dishonorable discharge are further penalized. Also, a student who never served may be listed as apathetic under those SPN numbers. "Latent homosexual," is another SPN number classification, as is bed wetter. There is a whole list of provocative words that may apply to a student who never served who was 4–F—if that is still the designation.

You have to understand that these are subjective designations in most cases based upon the commanding officer's opinion. One doesn't have an opportunity to contest those.

I think SPN's are an outrage. They should be ended. And the most conservative member of any committee, I think, looking at that, from just the point of view of fairness, would take that position.

Now if I may, Mr. Chairman, I would like to turn to the question of amnesty. I think I am still the only member of Congress who has gone to Canada to talk to those who evaded the draft, refused to serve. I went there in December of 1969. I spent 2 days there in Toronto and Ottawa and Montreal and I spoke to a total of perhaps 40 or so young veterans and some of the wives of these young men.

When I came back, I held a press conference on January 1 of 1970. I remember the day very well because it was a huge snowstorm, but it was a very important moment for me.

What I said at that time was that we have to seek a means, which will permit the return of these young men without their going to jail. I said then that it was clear that we would not provide any kind of amnesty while the hostilities were going on, although maybe we should, but the fact is we would not. I said though that we had to seek to find the means to provide amnesty when these hostilities ended. That time has come.

And in 1971 I introduced with Senator Taft the first bill on amnesty. It was a conditional amnesty bill. It provided that anyone who refused to serve, or evaded the draft, would be permitted to return and do 2 years of civilian service, and would then receive full amnesty. It was interesting what the response was and continues to be, Mr. Chairman.

I have had people say to me "How can you take the position that these people should serve at all? We should give them medals," say some. I don't accept that position. I understand it, but I don't accept it.

And then there are others who say "How can you permit anyone to return without punishment?" And I say "I don't accept that position either."

My legislation, the conditional amnesty bill, has tried to avoid ideology. It has tried to foster the position where those who opposed the war, like myself, can join with those who supported the war and in the interest of the United States, heal this divisiveness that exists as a result of the war without any particular ideology advanced on either side.

Now there are some who don't want to accept that. Some people believe that an ideology should be advanced either by labeling those

who refuse to serve as heroes or felons. I don't accept either position. I don't think it is helpful in healing the wounds.

Now the legislation which I have introduced is one that I think is acceptable to a broad sector of the Congress. I say that not because I have polled the Congress, because I have not. I have spoken to conservative Members of the Congress seeking their reaction. The first response is that "these young people must do something when they return. We have to take some recognition of the fact they have come back and they failed to serve." And I say to them "well, OK, what do you have in mind?" And the response is "they must go to jail." So I say "you know, jail doesn't help anyone who does something because he believes it is a moral act on his part, a matter of conscience. Don't you agree that jail only hurts in those cases? It hardens people. Our jails have not turned out reformed personalities in any area. So that is not the way to deal with this this situation. Won't you accept some constructive action?"

And they say "well, what do you have in mind?" And I answer "well, how about serving in a public health hospital, on an Indian reservation, or in the ghettos of this country, in the same way that these young men could have served had we had available to them selective conscientious objector status. While selective conscientious objector status should have been available it was not and is not now. Selective conscientious objector status would have given them the same rights, under the law, as guaranteed to those who for philosophical or religious reasons had refused to serve in any war."

In almost every case those who are very conservative will respond by saying "well, that sounds to me reasonable."

And so I believe there is a possibility of getting through a bill, which will have broad support.

Now, it also is helpful that the American public is supportive of amnesty in some form. The Gallup poll in 1973 showed 78 percent in support of some form of amnesty, conditional or unconditional.

A prior poll to that, I think in 1972, showed 71 percent.

The most recent poll was a poll taken by Harris, which did not refer to both forms of amnesty but only referred to conditional amnesty. There, 45 percent of the public said they were for conditional amnesty. My recollection is that 43 percent were opposed and 12 percent had no opinion.

But there is no question in my mind that at this point a majority of the public, an overwhelming majority, would support conditional amnesty as I have outlined it here and I believe there is also a broad majority in the Congress for that conditional amnesty too.

Just to conclude my informal comments—it is interesting to contrast the number of live male births with draft registrants. We find that there is a considerable fall-off between the live births in the years 1953 and 1954 and those 18 years later who actually registered for the draft.

Press reports show that Byron Pepitone, who is a Selective Service Director, is reported to have said that there is about a 4-percent drop-off. There were some reports that indicated 10 percent, but in checking it with his office, the quote was 4 percent; that 4 percent of those who should have registered did not register. Now those people are felons or possible felons and their numbers run into the hundreds of thousands. They never registered. They have just disappeared.

Now if a bill were to come on the floor that provided unconditional amnesty, I would vote for it. There is no question about that. But I know that is not pragmatic or practical at this particular moment. And when I hear and see these young men on television saying they are opposed to the conditional amnesty, my response to that is that there is no requirement to take advantage of it. But I don't want to see those who would take advantage of it held in hostage by those who have as their goal the unlimited amnesty, which I would support. I want something done this year and I don't want to wait to afford that opportunity to those who could benefit from it this year.

Thank you.

Mr. KASTENMEIER. We thank our colleague for his most constructive approach and also for his treatment of several issues including the SPN numbers, which has contributed to our dialog.

I wish to congratulate him for his long interest in this matter and his leadership. I only wish that time permitted us to ask questions of you, but it does not. We are nonetheless pleased to have you.

Next a statement from Congressman Mitchell will be accepted for the record and inserted at this point without objection.

[The statement of Hon. Parren J. Mitchell follows:]

STATEMENT OF THE HONORABLE PARREN J. MITCHELL

There are those who will appear before you throughout these hearings to ask for passage of amnesty legislation so that we might, as a nation, show our compassion and forgiveness. While I do not fault those people their motives, I do not agree with their reasons.

The passage of amnesty legislation is imperative, but not as an act of generosity. It is imperative to demonstrate to ourselves and to the world that the United States recognizes the inherent superiority of the principle of following the dictates of one's conscience above the blind acceptance of arbitrarily established laws.

This is not to say that all laws are arbitrary; nor is it to say that laws are not absolutely essential to the functioning of this, or any, country. If I did not believe in laws, I would not have labored to occupy a position in Congress for the very purpose of making them.

However, it has been proven to us time and again, throughout the history of this country, that laws may be ill-considered and may wreak havoc within our society. Such were the laws which permitted our involvement in an undeclared war, allowing the United States to demonstrate to the world that it was capable of slowly and methodically destroying the entire physical, mental and spiritual resources of the nation of Vietnam.

If not so tragic, it would be ironic that throughout this period we self-righteously demanded that our young citizens unquestioningly follow the letter of the law, of the very many laws, which were necessary for the maintenance of a war whose very existence was in violation of the Constitution of this country.

How dare we self-righteously condemn those young men whose only crime was to have the insight to look beyond the legality of the laws manipulating them, to the larger illegality to which those laws had become subservient.

It should be apparent to us that a nation ceases to exist as a civilized society, that it ceases all creative growth at that very moment in which its citizens cease to question the wisdom and the morality of its laws.

Why are we filled with such horror at the thought of the German citizens who sat back and watched the slaughter of six million people, who unquestioningly marched off to a war which was, to us, so "obviously" immoral, when we can, a mere thirty years later, commit to prison and to exile those of our citizens who had the courage to question and then refuse to participate in the genocide of war?

I am, therefore, not here to plea for mercy for those poor unfortunates who errored, but to insist upon the necessity of establishing in this country the freedom and the legality of following the dictates of one's conscience above all else.

Let us examine for a moment the traditional objections to the granting of amnesty. Foremost among these has been the assertion that "conscription in the Armed Forces would become impossible if draft-age men felt that they could flout the law and simply wait for a future amnesty to exonerate them." This argument has always held the most weight, as it equated conscription with national security.

In June of 1973 conscription came to a legal halt. We therefore no longer need to refrain from granting amnesty on the basis that it would weaken the resolve of our Armed Forces.

Another objection has been that the granting of amnesty would be a slap in the face to those men and to the families of those men who fought and often gave their lives in Vietnam. To some, this arugment lingers, despite the testimony of those men involved, those who did fight and perhaps were wounded, but who realize that those who did not fight were victims like themselves.

The war in Vietnam produced neither victory nor honor. It produced only victims, in Southeast Asia and in America. Those who served in the war, those who were wounded and those who died were victims of the war, just as those who went to jail or underground or into exile were victimized by it.

Further punishment and ostracism of draft dodgers and deserters will not stop the process of moral examination of this government's laws. It will never assure blind obedience, thank God. As long as there are thinking people, there is going to be resistance to war. The results of the resistance to the Vietnam war were that the entire nation finally coalesced in a united demand that we "get out of Vietnam." This outcry for peace was largely brought about by the efforts of the young men who dared to dissent. We should laud those young men for their role in the establishment of peace. Instead we continue to harrass them.

On December 19, 1973 Lewis Simon, one of the estimated 50,000 draft dodgers and deserters living in exile or underground, surrendered to F.B.I. agents. Lewis did so to set himself up as a test case. The Army agrees that he should be a test case. In the three months that Simon has been in the stockade at Fort Dix, New Jersay, he has been confined in solitary twice. Simon's physical and mental harrassment makes a mockery of the high-sounding ideals which are daily exposed in this country.

Eighteen Members of Congress have seen fit to co-sponsor a Resolution offering honorary U.S. citizenship to Alexander Solzhenitsyn and Andrei Sakharov. This Resolution is a tribute to two men who have dared to dissent from their government's policies. We laud these men for their dedication to conscience, we condemn the Soviet Union for its continued persecution of them, and yet we continue to tolerate the identical persecution in our own country. The Soviet Union's dissenters are heroes; ours are criminals.

In the past two years, democracy in our nation has been severely threatened. We stood on the brink of dictatorship almost without knowing it. We are now in the process of rooting out those elements in the government who perceive their personal gain to be above the welfare of the country. This process cannot be completed unless we acknowledge the innocence of those men who, following the dictates of their conscience, could not see fit to go to war, even if the government said it was the right thing to do.

They could not be convinced that killing was moral, if the government sanctioned it. They could not be convinced that the rape of the Vietnamese countryside was in the best interests of the Vietnamese people. And I cannot be convinced that they were wrong or that they are criminals. I yield my full support to legislation granting complete and unconditional amnesty.

Mr. KASTENMEIER. I regret that our colleague, the Hon. Howard W. Robison from New York, is not here. He was to have been the first leadoff witness last week had we been on schedule and not pre-empted by a matter in the full committee involving impeachment.

Congressman Robison cannot be here today but asked that his statement be presented by his legislative assistant, Mr. Larry Siegel, who is here.

Without objection the entire statement that you are offering, Mr. Siegel, will be accepted in the record.

Mr. Siegel, I don't know whether we have time remaining for you to deliver the entire statement. Do you wish to read it all?

TESTIMONY OF LARRY SIEGEL, LEGISLATIVE ASSISTANT, ON BEHALF OF HON. HOWARD W. ROBISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SIEGEL. No; Mr. Chairman, I will just try to give you a summary of it.

As you know from your conversation with Mr. Robison last week, he was very disappointed in not being able to attend the hearings. He made a series of statements to the Members of the House last spring, the primary message of which was that the House had to take up the question of amnesty and begin discussing it, and he was particularly interested that the Members of his own party do so.

It was for that reason that he felt that since he could not be here today because of travel plans that had been made several weeks in advance of today's hearings, that he hoped that some part of his statement would be read into the record.

Mr. KASTENMEIER. You may proceed.

Mr. SIEGEL. Thank you, Mr. Chairman, I will proceed with Congressman Robison's statement.

Mr. Chairman, I am deeply appreciative of your initiative in calling these hearings, because I am convinced that it is time for the House to take up this question of amnesty and, in that way, to start to "bind-up the Nation's wounds." Last Spring, I attempted to lay a small foundation for an objective discussion of this question by presenting to my colleagues a series of statements which summarized a few of the major amnesties of the American past. I was well aware, then, that I was swimming against powerful currents of emotion but, even in the short space of time since those statements, things have changed. And, it is my sad observation, Mr. Chairman, that things have mainly changed for the worst.

The end of American participation in the Indochinese war did not bring an end to the widely pervasive attitude that fellow citizens are to be counted as either "friends" or "enemies." Whatever the reasons for this sad polarity—and I believe we can find its roots far back in the last decade—it has only intensified. The end of U.S. involvement in Vietnam seemed unfortunately to have no healing force, as bitterness and recrimination have found new outlets through Watergate, endless inflation and now the energy crisis, out of which combination of factors Americans seem no closer than before to coming to peace with one another.

If we are ever going to make any headway in replenishing the national spirit, it will have to begin with the act of putting away at least some part of the recent legacy of dogmatic confrontation. There are persistent American qualities which can fortify us in building for the future, and our respected former colleague, Mel Laird, has recently been most persuasive in answering critics of his own public remarks on amnesty by evoking the pride we all share in the mercy and understanding which characterize the American system of justice.

Mr. Chairman, on behalf of Congressman Robison, may I request at this point in his testimony that Mr. Laird's letter to Commander Ray R. Soden of the Veterans of Foreign Wars be placed in the record.

Mr. KASTENMEIER. Normally I would say yes if it is essential to the statement. The reason I hesitated is that we have already received that

letter for the record and so we will either include it at this time or make reference to it as it appears elsewhere in the record.

Mr. SIEGEL. Very good. Let me continue Congressman Robison's statement.

Mr. Chairman, if the House chooses to further postpone a debate on amnesty, and to take the path of least resistance, rather than the more demanding course of engaging in what will certainly be a difficult debate over a potentially "risky" issue, it does so at the risk of perpetuating certain continuing animosities and, perhaps, watching them transform themselves into new forms of unhappy, and even dangerous, confrontation. We need only look at the history of the post-Civil War Reconstruction Era to understand how national energies can be squandered on recrimination, so that they yield only human and economic suffering.

The remainder of the statement has to do with Mr. Robison's proposal, which is H.R. 13001, for a conditional amnesty, which he states should be based upon the agreement between the individual who seeks amnesty and the authority which suggests necessary qualifications for receiving amnesty.

I would like to conclude with these final remarks taken again from Mr. Robison's own words.

Finally, Mr. Chairman, let me touch on the deeper question of the ultimate authority for granting amnesty, and the source from which it derives. When speaking to this point during my series of statements on amnesty, I attempted to outline the debate which has in this regard progressed, almost from the earliest days of the Republic, over the respective prerogatives of the legislative and executive branches. The precedents which come to us from prior Congressional debate and court decisions have never really clarified the distinction between "pardon" and "amnesty," nor has an historical consensus been reached which designates either the executive or legislative branches as the proper authority for the grant of amnesty.

Yet, to my mind, the mood of our time dictates that the grant of amnesty must not, itself, be another point for divisiveness, as might culminate from the attempt of a Congress to foist amnesty legislation upon an unwilling President.

Rather, I have drawn my bill in a way which necessarily involves the President, and which invokes the pardoning power which clearly belongs to the President under article II, section II of the Constitution. If amnesty is to work in the way I have suggested, and if it is to meet today's need for a beginning at reconcilation, it must involve the whole body of the Federal Government. Put another way, the gesture of amnesty must proceed from a unity of intention and cooperation which can only further contribute to the conciliation which amnesty is intended to create.

Thank you Mr. Chairman for allowing Mr. Robison's statement to be read before the committee.

[The letter dated January 28, 1974, from Melvin R. Laird to Comdr. Ray R. Soden, attached to Mr. Robison's statement was introduced in the record of March 11, and appears at p. 339.]

[The statement of the Hon. Howard W. Robison follows:]

TESTIMONY OF HOWARD W. ROBISON

Mr. Chairman, I am deeply appreciative of your initiative in calling these hearings, because I am convinced that it is time for the House to take up this question of amnesty and, in that way, to start to "bind-up the Nation's wounds." Last spring, I attempted to lay a small foundation for an objective discussion of this question by presenting to my colleagues a series of statements which summarized a few of the major amnesties of the American past. I was well aware, then, that I was swimming against powerful currents of emotion but, even in the short space of time since those statements, things have changed. And, it is my sad observation, Mr. Chairman, that things have mainly changed for the worst.

The end of American participation in the Indochinese war did not bring an end to the widely pervasive attitude that fellow citizens are to be counted as either "friends" or "enemies." Whatever the reasons for this sad polarity—and I believe we can find its roots far back in the last decade—it has only intensified. The end of U.S. involvement in Vietnam seemed unfortunately to have no healing force, as bitterness and recrimination have found new outlets through Watergate, endless inflation and now the energy crisis, out of which combination of factors and other factors Americans seem no closer than before to coming to peace with one another.

If we are ever going to make any headway in replenishing the national spirit, it will have to begin with the act of putting away at least some part of the recent legacy of dogmatic confrontation. There are persistent American qualities which can fortify us in building for the future, and our respected former colleague, Mel Laird, has recently been most persuasive in answering critics of his own public remarks on amnesty by evoking the pride we all share in the mercy and understanding which characterize the American system of justice. (Mr. Chairman, may I here request that a copy of Mr. Laird's letter to Commander Ray R. Soden of the Veterans of Foreign Wars be placed in the record at this point.)

Mr. Chairman, if the House chooses to further postpone a debate on amnesty, and to take the path of least resistance, rather than the more demanding course of engaging in what will certainly be a difficult debate over a potentially "risky" issue, it does so at the risk of perpetuating certain continuing animosities and, perhaps, watching them transform themselves into new forms of unhappy, and even dangerous confrontation. We need only look at the history of the post-Civil War Reconstruction Era to understand how national energies can be squandered on recrimination, so that they yield only human and economic suffering.

However, there are other chapters of U.S. history to consult, and many of them would instruct us to believe that there is a durable bond which links us together, as Americans, and which explains why the United States has remained a united nation in the midst of past and wide social, cultural and political diversity. This is a fact in our national history that I sought to invoke when introducing legislation to establish a National Amnesty Board, empowered to review the cases of those young men who left the country, or otherwise evaded military induction, during the Indochinese War.

Whatever its form, it is apparent to me that the process of any new amnesty will be as important as the result. The conduct of the amnesty arrangement must demonstrate to all observers that it embodies long-held concepts of fairness and justice, so that the process of amnesty itself is a means to the kind of reconciliation we should seek.

Further, I feel that the conditions of any amnesty—and in this regard one could characterize H.R. 13001, the proposal I have introduced, as a "conditional" amnesty—should be based upon an agreement between the individual who *seeks* amnesty, and the authority which suggests necessary qualifications for *receiving* amnesty.

In other words, the amnesty procedure should conform to the abiding principle which ought to be the goal of any amnesty arrangement. It should not be intended to provide an arena for settling conflicts of political or moral outlook—rather it should attempt to rebuild certain basic human ties.

Finally, I have concluded that a post-Vietnam amnesty should build, as carefully as possible, upon the legacy of the past amnesties which *have* occurred in this country. In my study of these precedents, some of which I reviewed in my statements to the House last Spring, I was particularly impressed by the care and conscientiousness which went into the implementation of President Truman's post-World War II amnesty.

I am happy to note that Mr. James O'Neil, who served on President Truman's Amnesty Board, will appear here tomorrow. He will have much to say, I expect, about the activities of the Truman Board. Suffice it to say, for my purposes today, that I have drawn heavily from the example set by that Board in making my own proposal. Without going into too many details of my bill, it is worth emphasizing that my proposal speaks in terms of an amnesty agreement and, further, that the process of the amnesty I envision would involve consultation between the individual applicant and a new National Amnesty Board over the terms of the amnesty, itself.

I have suggested in H.R. 13001, once the National Amnesty Board has reviewed the case of an applicant, and has determined that there is room for an amnesty agreement, that the Board propose, as part of an amnesty agreement, either a two-year period of miiltary service, or a two-year period of alternate civilian service. Such a proposal by the Board would, of course, be influenced by the nature of the applicant's justification for evading military registration or induction, and by such factors as personal disability and family responsibilities.

Finally, Mr. Chairman, let me touch on the deeper question of the ultimate authority for granting amnesty, and the source from which it derives. When speaking to this point during my series of statements on amnesty, I attempted to outline the debate which has in this regard progressed, almost from the earliest days of the Republic, over the respective prerogatives of the Legislation and Executive Branches. The precedents which come to us from prior Congressional debate and court decisions have never really clarified the distinction between "pardon" and "amnesty," nor has an historical consensus been reached which designates either the Executive or Legislative branches as the proper authority for the grant of amnesty.

Yet, to my mind, the mood of our time dictates that the grant of amnesty must not, itself, be another point for divisiveness, as might culminate from the attempt of a Congress to foist amnesty legislation upon an unwilling President.

Rather, I have drawn my bill in a way which necessarily *involves* the President, and which invokes the pardoning power which clearly *belongs* to the President under Article II, Section II of the Constitution. If amnesty is to work in the way I have suggested, and if it is to meet today's need for a beginning at reconciliation, it must involve the *whole* body of the Federal Government. Put another way, the gesture of amnesty must proceed from a unity of intention and cooperation which can only further contribute to the conciliation which amnesty is intended to create.

Thank you Mr. Chairman. . . .

Mr. KASTENMEIER. We thank you for presenting his statement and it will of course be placed in the record in its entirety.

This concludes 3 days of hearings on 10 measures relating to the subject of amnesty. I wish to thank the many people who have cooperated in making these hearings what I believe to be an enlightening experience—particularly for those nine of us on the subcommittee.

I desire to thank all of my colleagues on the subcommittee and particularly the gentleman from Massachusetts, Mr. Drinan, and the gentleman from New York, Mr. Smith, who have attended nearly every minute of what has been very long and involved hearings on a very difficult and emotional subject.

Rather than an end, this is a sort of a beginning—a relook at an old question. I hope that these hearings will serve to put forward in due course, if not now, constructive, affirmative proposals. And that we can look forward in the future, in the very near future I hope, to participating in the reconciling of differences and the bringing back of the Americans who for one reason or another are presently alienated from their country.

If we can serve them constructively in this cause, then I think we will have served the Congress and our Nation as well.

This therefore concludes the hearings and the subcommittee stands adjourned.

[Whereupon, at 2:15 p.m., the subcommittee recessed subject to the call of the Chair.]

[The following materials were received for the record:]

THE ONLY TRUE HONOR

(By Louise B. Ransom)

It is not possible to deal with the subject of amnesty for 500,000 young Americans without first dealing with the subject of the Vietnam War.

The war and I have endured a lasting relationship since my oldest son, Mike, was killed near My Lai five years ago this spring. He arrived at his first assignment—a new 2nd Lieutenant infantry platoon leader—on the very day of the massacre, March 16, 1968. After that unspeakable atrocity committed by our own American troops, who could blame the embittered South Vietnamese farmer who set the mine that killed Mike such a few weeks later?

Had he been alive in November, 1968, he would have rejoiced that Lyndon Johnson had been deposed. He once wrote: "I did hear Johnson's speech of de-escalation and noncandidacy and thought it the best of his career. It created in me a great sense of hope that this obscenity over here would end shortly." How he would have welcomed the new President with his shining promises to end the war and bring us together.

But where are we now, five long years later? We have a cease-fire and "peace with honor," but we have not ceased firing, people are still dying, and honor is nowhere to be found.

We can look back in horror and shame that the most advanced technological nation in the world was virtually annihilating—in the name of freedom—several primitive agricultural countries to preserve the thrones of such leaders as Nguyen Van Thieu and Lon Nol. The ultimate anguish for me is that my own son lost his life in the perpetration of such shame.

And the shame grows as the perfidy of our leaders is revealed through the deceptions detailed in the Pentagon Papers and the disillusioning reality of Watergate. This painful knowledge clarifies for me the action of those men who would not permit their bodies to be used, as Mike's was, to continue the madness. Their "crime"? They refused to obey leaders whom they could neither believe nor trust.

I share bitter tears with all of those who are victims of this war, particularly the 57,000 mothers whose sons will never return. We mothers weep also for the thousands of our sons who are maimed for life, wounded in body and spirit. There are, of course, not enough tears in the whole world for the mothers in Indochina. Creating half a million more war victims because of intransigence to amnesty is unbearable to contemplate.

The deepest tragedy for me, too deep for tears, comes from despair over what we have become as a nation. What are our true values? What does it mean when our heroes are professional warriors, when the bulk of our treasure is spent for instruments of death rather than to improve the quality of life, when the leaders we choose to govern us value power above people?

How are we parents, conscious of our American heritage—founded in dissent and dedicated to freedom—to raise our children to be proud of their country in such a climate? Have we not placed in jeopardy the very birthright of their whole generation to life, liberty, and the pursuit of happiness?

How can I help my five remaining sons to find some positive meaning in the death of their brother?

My husband and I have long faced the difficult truth that there was no gain for this country from our son's death. His life was wasted by his own government and nothing we do can alter that.

But the President, in an effort to find value where there is none, has said: "Let us not dishonor those who served their country by granting amnesty to those who deserted America." In other words, if amnesty is not granted, the death becomes honorable. I must disagree.

The only way we can dishonor those who died is to learn nothing from them—to repeat the past and continue our present course of action.

We are a divided, corrupted, and bloodstained nation. A universal and unconditional amnesty for men who refused to fight in the war—the ghastly symbol of all that is wrong—might just be the very element that could help to heal us.

At the very least, it could reconcile parents and sons. It could also restore our pride in ourselves as a compassionate people. It could revive our vision of devotion to social justice and renew our self-confidence by recognizing freedom of conscience for all.

Let us, therefore, join hands—rich and poor, black and white, parents and children—united in our faith in the healing power of amnesty, and determined to achieve it.

If somehow all the sorrow, and all the tears, and the killing can help us to become a better people, perhaps then, and only then, can we say that these deaths—these sacrifices—have been redeemed and will have had a positive meaning for us as Americans—the only true honor.

A Case for Amnesty

(By the Amnesty Committee of the Center for the Pursuit of Peace)

PART I: BACKGROUND INFORMATION

(A) Definition

The Greek word, "amnestia" meant to forget or intentionally overlook. Today, the legal term amnesty is defined as a general determination that whole classes of offenses and offenders will not be prosecuted. The Supreme Court, in two separate cases, defined amnesty as the abolition, oblivion or forgetfulness of an offense.

(B) Who needs it?

It is difficult to estimate the number of men in need of amnesty. It is agreed, however, that amnesty would benefit four groups: resisters, those incarcerated, deserters and the discharged.

Resisters are those who have violated the selective service law in some way. Opposition to war or the Indochina war specifically are the main reasons for resistance. Some individuals might also refuse induction because they do not recognize the authority of the State to draft them. This category does not include the men who have gone to prison or any who have received a legal conscientious objector status.

Those incarcerated are persons who refused a CO status or did not receive it and chose to serve prison sentences rather than flee the country. At present, there are about 300 such men in federal prisons, while another 6,000 face possible prosecution. About ten thousand men have been convicted for evasion since 1947.

A deserter is one who is absent for more than 30 days without military authorization. In 1968, the Pentagon reported more than 53,000 deserters. During the first ten months of fiscal year 1971, the Army alone reported 68,449 deserters. The Pentagon has reported that 354,427 men deserted from the armed forces over the four year period from 1967 to 1971. Some of these individuals, from their experience in the military, and others specifically in Vietnam, increased their opposition to the war to a point where they finally left. Admittedly, some men deserted out of personal fear, while a number of Blacks and other minorities left for racial reasons. Today, these men are in Canada, Sweden or remain underground in the United States.

The final group considered for amnesty are those who receive a less than honorable discharge, especially an "undesirable" discharge. The armed services rid themselves of men they believe to be undesirable. Since 1962, approximately 300,000 men have received less than honorable discharges. This category includes not only men who are objecting to war, but also men who have committed other criminal acts. Such a discharge effects negatively civilian job opportunities.

As was said above, it is difficult to estimate the number of men in need of amnesty. Canadian officials claim there are 50,000 to 70,000 American draft resisters and deserters in Canada. Others place the figure higher. John M. Swomley, Jr., Ph. D., a member of the National Committee of Clergy and Laity Concerned and of the National Board of the American Civil Liberties Union states: "More than 100,000 young Americans are either in exile or have otherwise refused to comply with draft laws.

(C) *History of amnesty in the United States*

(The following outlines the history of American amnesty as drawn up by Dr. Henry Steele Commager of Amherst College)

Those who supported the British Crown during the revolutionary war were dealt with harshly. During and after the war, 80,000 fled to Canada and only a few returned. Desertion was wide-spread in Washington's army but after the war no attempt was made to punish deserters.

President Washington granted amnesty to participants in the Wiskey Rebellion saying, "I shall always think it is my sacred duty to exercise with firmness and energy the constitutional power with which I am vested. Yet my personal feeling is to mingle in the operations of the government every degree of moderation and tenderness where justice, dignity and safety permit."

In 1807, Thomas Jefferson, and later Abraham Lincoln during the Civil War, pardoned all deserters on condition that they return to the military. In 1830, President Jackson pardoned all deserters on condition that they never again attempt to join the military.

At the end of the Civil War no legal action was taken against the deserters or draft evaders in the North. After the war, Lincoln and President Andrew Johnson granted total amnesty to citizens and soldiers of the Confederate army who were legally guilty of treason for having taken up arms against the government of the United States.

There was no amnesty after W.W. I. Many war protesters, including Eugene Debs, remained in jail after the war for the duration of President Wilson's ten years. President Harding freed Debs and others. Later, Calvin Coolidge released most of those remaining in prison.

After WW II, a three man board was established by President Truman to review 15,000 cases of draft evaders and violaters of military laws. About 10% were given amnesty.

PART II: A CASE FOR AMNESTY

(A) *Moral directives of the churches*

Within the past few years, many religious bodies and organizations have spoken out in favor of granting amnesty. Excerpts of some of their statements follow:

United Church of Christ: "In the interests of reconciliation and binding up of wounds, for the sake of our freedoms and to allow our high respect for conscience, in the best traditions of a strong and secure democracy, in the name of Christian love, we urge the President of the U.S. to grant, at the earliest possible opportunity, amnesty and pardon for those who for actions witnessing to their beliefs have been incarcerated, deprived of their rights of citizenship, or led by their conscience into exile during the course of the nation's great agony in the Vietnam war". (Seventh General Synod, Boston, June, 1969)

United Presbyterian Church in the U.S.A.: ". . . asks the Congress, the President, and other public officials, and our fellow citizens for a reconsideration of the plight of those young men who, in good conscience, have found that they cannot participate in a particular war but have no redress or relief under existing laws. We urge retroactive recognition of their claims and reduction of punitive sentences, together with appropriate amnesty as soon and as systematically as possible." (181st General Assembly, 1969)

"We specifically urge Presidential amnesty for those who are imprisoned or expatriated for conscientous dissent to this war." (Report of the Standing Committee on Church and Society to the 183rd General Assembly, 1971)

U.S. Catholic Conference: "We urge civil officials, in revising the law, to consider granting amnesty to those who have been imprisoned as selective conscientous objectors, and giving those who have emigrated an opportunity to return to the country to show responsibility for their conduct and to be ready to serve in other ways to show that they are sincere objectors". (Statement, Oct. 21, 1971)

American Baptist Convention: "Therefore, consistent with our concept of freedom and conscience, and recognizing that man of our ancestors came to this country to avoid conscription in Europe, we call upon the President of the U.S. to grant amnesty . . ." (Resolution on Conscience, Freedom and Responsibility, 1969.)

Lutheran Council in the U.S.A.: "We urge loving concern also for those who refused to participate for reasons of conscience, including those who chose to face prosecution or to leave our land and seek refuge in another. We express our approval of new initiative from both government and private agencies to resolve

the question of amnesty and to provide services, in order to facilitate re-entry into the life of the nation." (Statement, Febr. 29, 1972)

Other instances which might be cited: The Ecumenical Witness, K.C., Missouri, January, 1972: the Board of Directors of the Natl. Council of Churches meeting in Dallas, Texas, December, 1972 and Rabbi Abraham Heschel's statement on the "Theological, Biblical and Ethical Considerations of Amnesty", presented at the Interreligious Conference on Amnesty, Washington, D.C., March, 1972.

(B) Preserve freedom to dissent

Our democratic system of government in the U.S. is based on two fundamental principles: that men make government and that there are limits to the authority of government. It is therefore a system of limited government based on majority rule, not on dictatorship of the majority. Our Constitution is careful to prescribe a limited government in order that the sacredness of the individual's rights, rooted in our liberal Western philosophy of natural rights and set forth in the Bill of Rights, may be safeguarded. The basic problem inherent in democracy lies in the fact that these two elements of majority rule and the individuals' rights may often clash. The result is *dissent.*

Since a democratic state is dependent on the willingness of its citizens to commit themselves to its political values and to act accordingly, a democratic state must necessarily be based on a pluralism where dissenting opinions are as respected as the majority's decisions. In fact, it is this disent, both within and without the sphere of recognized party competition, that most contributes to the quality of democratic governance. Therefore, broad guarantees of protection, which also extend to political dissent for its free expression, are what makes government functional and responsive. A democracy's viability rests upon its ability to effect the fine balance between this dissent and majority opinion. In practice, however, political dissent seems to be more vulnerable to suppression because many think it constitutes a greater threat to governmental stability than the exercise of other freedoms. A crucial question for U.S. democracy today is whether or not free expression of political dissent is to be permitted or suppressed.

Political dissent from the Selective Service Law is grounded in the inviolability and dignity in which the individual's conscience s held in our democracy. Our liberal-democratic theory of governing centers around the protection of the individual as an autonomous moral agent. While some subordination to governmental authority is necessary in our society, when this authority overrules the citizen's conscience, then it is also overstepipng the constitutional restraints so essential to our democracy. Therefore, not only is the individual demeaned, but the democratic state likewise suffers whenever conscience is coerced, whether the coercion is successful or not. Genuine demoratic pluralism is betrayed when dissent is punished and moral autonomy is subordinated to the collective will. In his *Essays on Civil Disobedience*, Thoreau expresses these principles well:

"A government in which the majority rules in all cases cannot be based on justice, even as far as men understand it . . . Must the citizen even for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. There will never be a really free and enlightened State until the State comes to recognize the individual as a right and independent power, from which all its own power and authority are derived, and treats him accordingly."

The test of how democratic any government is depends upon the number of political prisoners it puts or keeps behind bars.

Unfortunately, thousands of young men who conscientiously objected to military service because of moral reservations during the Vietnam conflict have been forced into positions of civil disobedience. When a significant number of citizens disagree with a statute intensely enough to identify themselves publicly as lawbreakers, with the attendant risks of arrest and punishment, it reveals that democratic procedures have broken down or are not available: it is a demand for responsiveness. When a society is driven to prosecute thousands of dissenters who have been alienated to the point of civil disobedience, then that society is in danger.

(C) Prison not effective for war resisters

Selective Service violators are subject to felony convictions and may receive maximum sentences of five years in a federal prison or a $10,000 fine or both.

Dr. Willard Gaylin, a New York psychiatrist, has conducted a study of Vietnam war resisters in prison and has published it in his book, *In the Service of*

Their Country, (1970). He examines these individuals and the prisons which contain them. On the type of individual serving a Selective Service violation term, Dr. Gaylin writes:

"Some of the most truculent, exhausting, and threatening prisoners were the political draft resisters of World War II. This turned out not to be the case with this group. The different nature of the conflict generated a different population of resister, different sociologically and psychologically . . . The current resisters are not completely, not even preponderantly, political protesters. They are a heterogeneous group which . . . is composed primarily of what would be considered moral or religious objectors . . . They are contemplative and tolerant people who are individual rather than group oriented . . ."

Gaylin concludes that most of them come from a personal sense of moral outrage with the war and with a strong conscience, which would not permit them to participate in it or to avoid the confrontation.

Dr. Gaylin also discusses the question of whether prisons have facilities to deal with war resisters. He points out:

"In their case no pretense at rehabilitation is offered, for the most part they don't require it, and no opportunities for education are available, because of their high level. They are there purely to be punished . . . It is evident in such things as their exclusion from the work release program. When I first asked one of the correctional officers at the prison why COs were not permitted on work release, I was told it was because work release was for the purpose of rehabilitation to the normal community, and these were people who did not need rehabilitation."

Selective Service violators have received prejudicial treatment and have been refused parole. Dr. Gaylin comments:

"At the time I began this research, all Jehovah's Witnesses were routinely granted parole at fifteen to seventeen months. This was certainly reasonable and understandable since they adequately satisfied the conditions for parole. What was not understandable was why the other Selective Service violators were routinely denied parole."

Imprisonment as a means of punishment can produce harmful effects. Not only may a person be hardened by the prison experience and find difficulty adjusting to the community once released, but the community may actually suffer. The cost of maintaining these resisters in prison, e.g., food, shelter, medical attention, clothing, etc., must be borne by society.

The image of the United States suffers through the imprisonment of these individuals:

"Once the country to which people turned for refuge and exile and hope, ours is now the land from which men flee for refuge. Once a nation that held out the hope of fresh starts for dissidents abroad, we now imprison our own political objectors." (Thomas Hayes, *American Deserters in Sweden*, 1971)

Another question yet to be answered is whether jailing is an effective deterrent. The Military Law Review points out:

"When faced with the choice of obeying military law and compromising strongly held principle—or—obeying his conscience and thereby violating military law, the writer's experience indicates that the sincere objector will generally take the latter course of action. The threat of punishment by court martial is no deterrent." (Dept. of the Army Pamphlet, Mil. Law Rev. Vol. 47, Jan., 1970)

CONCLUSION

In light of the above, the Amnesty Committee of the Center for the Pursuit of Peace believes that there is a strong case for the granting of amnesty. Amnesty should be seriously considered by the Congress and by the Administration.

In granting amnesty we would be following clear moral guidance originating in our own religious bodies. We would preserve the vital tradition of tolerating dissent. We would admit the futility of punishing political dissent by prosecution and incarceration.

Before one can discuss various "degrees" of amnesty, the American people must decide whether they do indeed wish to heal the wounds caused by the war. If they wish to "write off" and forget their fellow citizens who were alienated by the war, they can hardly expect Congress or the Administration to reverse their current "do-nothing" stance. When the people show a desire to alleviate the plight of *all* who are suffering hardship because of the war, then the necessary machinery will be set up by the Congress and the Administration.

It is hoped that this pamphlet will help more Nebraskans to see a case for amnesty and that they will do their part to "make it happen" for their fellow Americans.

CLERGY AND LAITY CONCERNED

My name is Ronald Freund. I am the Midwest Regional Coordinator for Clergy and Laity Concerned (CALC), the interfaith peace organization.

In my work, I have spoken with and counselled many people directly affected by the War in Indochina. They have included veterans with less-than-honorable discharges, men in exile in Canada, parents of exiles and parents who lost their sons, POWs, and people who committed civilian acts of resistance to the War, a category in which I myself fall. All of these people are victims of the War in Indochina. All Americans will suffer with them until there is a just and humane resolution of their problems. A universal and unconditional amnesty would be such a resolution.

The issue of Amnesty is one of the most burning questions facing the American people. We are living in an era following the longest direct military involvement of our nation in history—the War in Indochina. We are also living in an era where the highest officials of our government are accused of committing serious crimes against society. It is an era where Americans are confused about the standards of justice and the requirements of conscience.

We pray that from this confusion will emerge a nation re-dedicated to a tradition which places the values of "higher moral law" and reconcilation of a divided people above those of punishment and vindictiveness. It is in this spirit that we ask the following:

"For all those whose opposition to the War in Indochina brought them into conflict with the laws of the Government, we ask amnesty. Let all those who are convicted be set free and all those facing prosecution be immunized from further jeopardy and all records wiped clean. For all deserters, draft violators, and those accused of civilian acts of resistance, let there be a new beginning. For the half million veterans who are now being punished for life by other-than-honorable discharges, let their records be corrected to make them eligible for benefits that would facilitate a more hopeful future.

Religious tradition teaches that 'you should not hate your brother in your heart but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance against the sons of your own people . . .'

We cannot restore to life our dead soldiers, nor undo the wounds of others. We cannot undo the devastation of the land and people of Indochina. We can repent and work for post-war healing. An unconditional and universal amnesty would free us for a responsible and serious effort to rebuild our divided people."

Thank you.

RONALD FREUND,
Midwest Regional Coordinator.

BERKELEY, CALIF., *February 22, 1974.*

Hon. ROBERT W. KASTENMEIER,
House Committee on the Judiciary,
Rayburn House Office Building, Washington, D.C.

SIR: I am writing to you to express my views on amnesty. I returned to this country on the 15th of March 1973 after spending five years and two months as a prisoner of war in Viet Nam. I went to South Viet Nam in Jan. of 1967 as a crewchief for Army UH–1 helicopters. In November of that same year I extended my tour of duty but on Feb. the 8th 1968 my helicopter was shot down and I became a prisoner.

My experience in South Viet Nam both before and after capture and my experience in North Viet Nam has convinced me that American involvement in that country was against the best interests of the Vietnamese as well as the American people. Our involvement in the internal affairs of that country has caused years of suffering to its people and even today our tax money goes to support a dictatorship of the worst order, headed by Nguyen Van Thieu who imprisons thousands of his own people only because they do not share his views or will not submit to his tyranny.

When I returned to this country less than a year ago I heard our President say that to grant amnesty to those who resisted the war would be letting down

the boys who died or were wounded in the war. I think however, that we must realize that those people in this country who refused to go and kill in Viet Nam cannot and should not be held responsible for any deaths in Indochina. These resistors should not be used as scape goats for bad foreign policy planning or for the failure of the Nixon Administration. To try and shift the responsibility for American deaths in Viet Nam onto people who refused to kill is in my view an insult to anyone's intelligence who understands the nature of the Vietnam war.

As an American serviceman I gave six years of my life for our involvement in Indochina and it took those years to understand the people of that country and the war. And so I can have nothing but admiration and respect for those people who resisted that war. I think it should also be remembered that true loyalty to one's country does not always mean going unquestionably overseas to kill or die for something that was never made clear to the people of that country.

It is my sincere hope that these people will be given a universal and unconditional amnesty, not as a pardon for their acts but really because they have committed no crime.

Sincerely,

ROBERT P. CHENOWETH.

THE DIOCESE OF NEW YORK,
OF THE PROTESTANT EPISCOPAL CHURCH,
New York, N.Y., February 28, 1974.

Hon. ROBERT W. KASTENMEIER,
House Committee on the Judiciary,
Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: Since I shall be unable to appear at the Committee's hearings on amnesty scheduled for March 7th and 8th, I ask that the enclosed statement be made part of the written record.

Sincerely,

PAUL MOORE, Jr.,
Bishop of New York.

Enclosure.

STATEMENT ON AMNESTY PREPARED BY THE RT. REV. PAUL MOORE, JR., BISHOP OF NEW YORK, EPISCOPAL CHURCH

I believe in complete amnesty for all those who have suffered reprisals because of a conscientious refusal to participate in the Vietnam war. I support that amnesty for draft resisters, deserters, exiles, and those with less than honorable discharges.

My reasons are simple. The war is over. Let us not only forgive and rehabilitate the enemy, as the President asked when the war ended. Let us also forgive and reclaim our sons and our brothers and our neighbors.

These men are, for the most part, sensitive and deeply conscientious. We need them at home, among us, to help rebuild an America torn and unhappy over fresh crises.

Hanging over the amnesty debate is the grim fact that so many Americans died in Vietnam. I can understand the anguish of those who lost a son or a brother or a friend in an unpopular war, but I cannot help feeling that the spirit of forgiveness will heal the anguish far better than a lingering spirit of anger against those who rejected the war.

I think that a balanced view of those who fought in Vietnam and those who did not is stated well in the following resolution, adopted by the Convention of the Diocese of New York on May 8, 1974:

"*Whereas,* American society must proceed to heal the wounds at home and abroad caused by the Vietnam War and to reconcile all men in the newly achieved peace, and

"*Whereas,* in the power of the Holy Spirit all Christian people must witness to the renewing of men and community through forgiveness and pardon, especially for those punished for actions based on conscientious convictions,

"*Be it therefore resolved* that the Diocese of New York memorialize the General Convention (of the Episcopal Church) to call on the appropriate civil authorities to grant amnesty to all who have refused military service in Vietnam for reason of conscience, and

"*Be it further resolved* that the Diocese of New York memorialize the General Convention (of the Episcopal Church) to recognize and commend those who in

obedience to conscience and the call of their country chose to follow the law of the land and serve in Vietnam or wherever called upon to go."

A similar view appears in a resolution or "statement of conscience" adopted by the Bishops of the Episcopal Church in a national meeting last October (in Louisville, Kentucky):

"*Whereas* American society must proceed to heal the wounds at home and abroad caused by the War in Indochina and to reconcile all people in peace, and

"*Whereas* the national disunity brought about by the War in Indochina has caused some in this nation to scorn the conscientious acts of those who resisted the call to bear arms, and others to belittle the sacrifice of those who accepted the call to military service, and

"*Whereas* as Christians we are called to work for reconciliation among all people; now therefore be it

"*Resolved* that the House of Bishops calls upon the appropriate authorities of the government of the United States to grant to Vietnam veterans every benefit it has given to veterans of past wars; and be it further

"*Resolved* that general amnesty be granted to all who have refused to participate in the conflict in Indochina; and be it further

"*Resolved* that the House of Bishops calls upon dioceses and parishes of this Church to include in their Christian education and social concerns programs a serious consideration of the question of amnesty and the needs of returning veterans."

I support these views. Without belittling the sacrifice of those who accepted the call to military service, I urge amnesty now for those who resisted it on grounds of conscience.

NEW YORK, N.Y., *March 1, 1974.*

HON. ROBERT W. KASTENMEIER,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. KASTENMEIER: Regarding the House Judiciary Committee's Hearings on Amnesty to be held this week, please find enclosed testimony for the record.

My name was submitted as one of three former exiles, men who had been indicted for draft evasion and who had gone abroad for a number of years—in my case four—rather than to prison. I hope you wil find one of us to be relevant witnesses.

My name was submitted to William P. Dixon of your office by Henry Schwarzschild of the American Civil Liberties Union amnesty project.

I am the author of the only comprehensive book on the Vietnam War's military and draft exiles. I was a working journalist before my refusal to be drafted in the spring of 1968 and my indictment on October 28, 1968. I therefore did what came naturally, which was to write a number of magazine articles for *The New Republic*, the Boston *Globe* magazine etc. and a book on the subject of the exiles in Canada, where I found myself. (The New Exiles, 401 pp. 17.95 & $2.95, Liveright, N.Y., 1971.) In London, England, I later became a consultant to the ACLU Project Amnesty. In February, 1973, I returned to Cleveland, Ohio, and successfully sought a dismissal of my case. The last year I have worked in New York for NBC News as an investigative reporter and have recently gone back to freelance writing (see recent cover stories on amnesty in *The New Republic* and *The Nation*—current assignments are from *Rolling Stone*, *Penthouse*, and *New Times*). Before resisting the draft, I was a freelance correspondent in Vietnam for several months.

I would be pleased to testify at the hearings or have my written statement inserted in the record. Thank you.

Sincerely,

ROGER NEVILLE WILLIAMS.

STATEMENT FOR HOUSE JUDICIARY COMMITTEE HEARINGS ON AMNESTY

(By Roger Neville William, author, journalist)

GENTLEMEN OF THE COMMITTEE: Alexander Solzhenitsyn is now in exile. He had a choice. Keep quiet or go to jail. He refused to keep quiet and refused even a half hour's work at a labor camp. That left exile, imposed on him by the Soviet Union.

During the Vietnam War, tens of thousands of young Americans had a choice. Keep quiet and be drafted for Vietnam. Or refuse. Refuse to be drafted, and go to jail or into exile. Serve the government in an undeclared war that the nation's best minds did not think served the interests of the United States, in a war that was not for the country's defense but which many people considered an aggressive war against a poor, agricultural Asian people, *or*, refuse, and go to jail or exile. During those difficult years some 800 men chose jail. Perhaps a hundred thousand chose exile abroad or exile in their own country.

Speaking as one who spent five years as a fugitive under indictment for draft evasion, four of them in exile in Canada and Europe, I think I can understand what it must be like for Solzhenitsyn. But I'm not concerned here with the Soviet writer; I'm concerned with *Americans* in exile, friends of mine who also, like Solzhenitsyn, face prison terms if they return to their homeland and families.

I ask the gentlemen of this Congress, who have the power to declare war and to grant amnesty, why can't my friends come home?

Why can't Dr. Don Burke, a surgeon in Montreal, Jesse Winchester, singer and recording artist, Peter Milord, a poet and teacher in Newfoundland, come home? Why can't Montreal discjockey, Andy Barry, come home? Why can't university professors Bruce Garside and Paul Petrie come back from Montreal and Vancouver. Why can't former New York Times reporter, Richard Gooding, come home? Why can't Richard Perrin, auto mechanic in Regina, and Stan Pietlock, high school teacher in Toronto, come home? Why can't Montreal film-maker, Jarad Finesmith and Vancouver photographer, Ross Hazel, come back? Why can't David Weise, homesteader in British Columbia and Fritz Effaw, computer analyst in Britain, come home? Why is Lewis Simon in solitary confinement at Fort Dix after five long years in Sweden while Lieutenant Calley is free on bond?

I came home, but I was lucky. After the war and the draft ended last January, I took advantage of a procedural error that had been lurking in my selective service file. With the help of a good lawyer, my case was dismissed. But not everyone is so fortunate. Most of the men I mentioned above are army deserters. They face time in prison if they return and most of them can't afford that because they have careers to follow and families to support. One man I know, a deserter, who has *no* family to support and *no* family in the United States to support him—a very lonely exile—returned last year after five years in Sweden. He expected to be released from the service with a less-than-honorable discharge, and would have felt honored. He wanted very badly to be a free American once again. Instead, Richard Dean Bucklin is serving 15 months at hard labor in Leavenworth. That's his amnesty.

When there is serious talk of amnesty, many well-meaning people talk of the need for the exiles to pay a price. But what is three, four, five years' exile if not a price? I know men in Canada who have spent literally one third of their life in exile, the whole of their twenties, and these men have wives and babies. Are you going to ask that they serve two years in a hospital or Vista or whatever before they are allowed to return to this country as free men? That isn't an amnesty. You cannot qualify an amnesty. An amnesty is or it isn't.

And why would it be fair to ask a man of 30 or 31 or 32 to "serve" his country in order to clear his name when no one was asked to serve in Vietnam over the age of 26, the cutoff for the draft? Also, the idea of a review is equally absurd. How would a review board deal with 30 to 50 thousand draft violators, tens of thousands of non-registrants, 35,000 deserters, thousands of men and women with criminal records for antiwar civil disobedience, and 450,000 Vietnam-era veterans with less than honorable discharges?

No one at all will return under a conditional amnesty. No one will pay a further price for the right to return. The exiles will simply settle down permanently, as so many already have, to life in whatever country they find themselves, and will never again visit their birthplace or be able to return to take care of sick and elderly parents—they will never see their native land again. That will be the result of a conditional amnesty. And they will haunt this nation forever.

Why is it so difficult for this country to grant an amnesty. Why was Czechoslovakia able to grant amnesty last year to 50,000 Czechs who fled in 1968 rather than submit to the Russian boot? Why did that Czech amnesty also include non-violent criminals in Czech prisons serving less than five year sentences? Why did Jordan grant amnesty to the Palestinians who tried to overthrow the government—surely a far greater crime than evading government service?

Why did Greece grant amnesty to hundreds of political prisoners including the man who actually attempted to assassinate General Papadapoulos in 1968? Why did East Germany last year grant amnesty to 33,000 political prisoners including many people that government had accused of treason? And why could Premier Gough Whitlan of Australia make the first act of his new government a declaration of amnesty for Australia's war resisters, releasing several hundred from prison on the first day of his term?

"Law-n-order" certainly are not about to collapse in these various sovereign nations. Neither East Germany nor Australia are afraid for the security of their country or are worried about "dishonoring" fellow countrymen or soldiers by granting amnesty to political dissidents and war resisters. Are these countries more generous, more humane, more magnanimous and most of all, more secure, than the United States? It appears so.

Why was deserting or resisting the draft during this war such a crime? What about the hundreds of thousands of men who avoided Vietnam service by joining the National Guard? What about the thousands who received phony medical deferments or went into deferable jobs in industry or taught school? Why is it we who avoided service in a war we considered wrong by going to jail or exile the ones who have to pay? Why do the exiles face jail terms while the Vice President of the United States commits far greater crimes and goes scot free?

This Congress must grant an amnesty. It is clear the President won't and doubtful that his possible successor will. Mr. Nixon has compared himself with Abraham Lincoln, but modestly makes a distinction on one point. Unlike Lincoln, he will never grant amnesty to deserters and draft evaders. He has made that perfectly clear.

Lincoln, during the Civil War, personally intervened to spare the lives of deserters. He bent the rules to favor compassion and pardoned those whom he called "neighbors and neighbor's sons." The government after the war also pardoned the entire Confederacy and all of its soldiers and generals who had taken up arms against the government in Washington. Nixon can compare himself to Lincoln but history won't.

History, rather, waits on the gentlemen of this Congress. This Congress could show compassion and noble leadership by passing an amnesty bill that would help put the scars and divisions of the Vietnam years behind us. You, as "representatives" of the people too often feel, if I may say so, that you must simply represent the people's will and do their bidding. But the people have been misled and their will is confused and they want nothing so much as leadership.

An amnesty should cover all draft evasion, desertion and antiwar offenses occurring from August 4, 1964 to January 23, 1973, the date of the Paris Agreements and the suspension of the draft. All less-than-honorable discharges received during those years should also be included in a universal, unconditional amnesty. Nine years is a very long time of upheaval in the life of this nation and many of its citizens. By comparison, our fathers' involvement in World War II was only three years. There are actually men in Canada who said "Hell no, we won't go" in late 1964 and for whom this year of 1974 marks one decade of exile. Have they not paid a price? Have we all not paid a price. Has this country not paid a price?

Why *can't* this government grant an unconditional amnesty? What kind of a country is this anyway?

PARIS, FRANCE, *February 25, 1974.*

Representative KASTENMEIER,
U.S. House of Representatives,
Washington, D.C.

HONORABLE MR. KASTENMEIER: I have read that your subcommittee will be holding hearings on the question of amnesty. I am one of those concerned, having left the States in December of 1968 rather than take part in a war that went against all I believe in. Though I obviously cannot be present to give testimony, I would like to state my views here and, if possible, have them read into the record.

I think that the media and the exigencies of politics have caused a distortion of what we who have come to be called draft dodgers represent. Too often, people at the extremes have been depicted as representative of the whole group. I would like to tell my story which, I think, is more or less typical of draft dodgers as a whole.

I am a man who deeply loves his country, the United States of America. In my more than five years of exile, I have never stopped loving it. On the contrary, my years in Canada and Europe have shown me that the American experience is truly a unique one, one which still captures the imagination of the world and which still evokes in me great feelings of pride and love.

The day I left the United States was the saddest of my life. Those who say that leaving the country was a coward's choice have little understanding of the pain and agony involved in such a decision and the ensuing consequences. For me, and for many like me, the decision was a kind of death, a terrible wrenching apart from us of something essential and deeply loved. Years spent in exile have caused pain only in part explained by the long separation from family and friends. The separation from country also causes great suffering.

I am from Missouri, the heartland of the country. My parents are farmers and our lives and hearts are deeply attached to the American earth. In us all, there is a corresponding attachment to America the idea and the ideal. This is no mindless belief in an ideology, but rather a vital participation in the continuing American experience.

The war in Vietnam was a shock to our belief and trust in the United States. I saw my country engaging in something unworthy of it, something shameful and immoral. All that had been instilled in me *as an American* caused me to judge that very same America as guilty of something I could not condone. I am no starry-eyed idealist; I realize the necessity for certain kinds of action in world affairs, the world being what it is. But the war in Vietnam, quite aside from being an exercise in futility, went against all I believed in.

Several possibilities were then available to me. The first was to serve in the Army in spite of my beliefs. This I could not do and remain a man I could live with the rest of my life. The second was to claim to be a conscientious objector. But to be a C.O., one had to swear to be against all wars. That would have been perjury on my part, for I would fight to defend my own country. A third possibility would have been jail. But, in addition to my duty to my country, I have duties to my family and to myself. What five years of imprisonment would have done to me would have been ugly and would have left these duties unfulfilled. Furthermore, prison would have meant that I was being punished by the system for the very beliefs that same system had instilled in me. The last possibility was to go into voluntary exile, and that was what I chose.

Exile is painful. Brothers and sisters grow up in your absence, get married, have children which you never see. Parents grow older and feel the absence of one of their children more deeply. Life goes on, but those in exile are separated from much that gives it meaning.

Yes, I think it is time for amnesty. I feel no bitterness toward my country for my personal fate; I have never felt anything but profound sorrow. To say that it is time for both sides to forget is useless; the wounds caused by this war will not heal in our lifetime. It is time, however, for a mutual forgiveness. Finally, I think it is important to remember that we who chose to go into exile did so out of a belief in what our country should stand for. It was a matter of conscience, not cowardice.

I would greatly appreciate it if I could receive a copy of the subcommittee's findings and conclusions. Thank you very much.

Sincerely,

WESLEY SIZEMORE.

ACTON, MASS., *February 27, 1974.*

HON. ROBERT W. KASTENMEIER,
House Committee on the Judiciary,
Rayburn Office Building, Washington, D.C.

FRIENDS: As your hearings on Amnesty approach I have wanted to write you as the parent of a war resister who has served his time—"paid his price" for his conscientious disobedience of the draft law. It is, strangely, impossible for me to do just this. If I speak about amnesty, I must speak about all the men whose deepest instincts demanded that they reject our military behavior in Vietnam, be they resisters, deserters, evaders, avoiders or mutineers. Each of them, given his own base and his own perceptions, has done *what he had to do* in revulsion over what we adults asked him to do to himself, his country and the people of Vietnam. As I heard it, the young Black man's "Hell no, I won't go" and the

religious objector's "obedience to a higher law" shared a ring of truth that we don't often hear in Washington these days. They were both willing to say NO when asked to do something they perceived as wrong.

My son, a classified C.O., has paid a high price for saying no to conscription. He spent a decade being classified, channelled, indicted, tried, sentenced, jailed and paroled. He spent nineteen months as a Federal convict, six weeks of it in "administrative segregation" which means solitary confinement which means twenty-three and a half hours a day in a metal cage and the other half-hour pacing an indoor metal catwalk. He spent five hundred and seventy nights in jail, and nights in jail are damned. And for the rest of his life—barring amnesty—he's an ex-convict.

One might suppose that the 6500 men who have "paid the price" for resisting evil would have no need of amnesty now. The fact is that they are still paying, and always will unless a universal, unconditional amnesty restores them to full citizenship. Presidential pardon might restore some of their civil rights: the right to vote, to run for public office, to hold professional licenses, to compete without prejudice in the job market. But these men who insisted on their right to refuse to kill their brothers and sisters in Vietnam are not asking anyone's pardon for so doing—least of all a President who demonstrates little understanding of conscientious refusal to do wrong.

Amnesty—not pardon—is what they need, and amnesty is what the older generation must see that they get. Most of us have done a good job of forgetting our early support for the Vietnam war which we have now come to deplore. Because our clear-eyed younger generation deplored it before we did is no reason for us to forget their "trespasses" less readily that our own.

I write you, then, for only one purpose: to ask you, and me, and all of us over 35 to commit ourselves to the provision of full amnesty for all of our sons who somehow, despite us, have re-learned the ancient American virtue of saying NO to wrong-doing, no matter what the cost.

Submitted to the Judiciary Committee in all sincerity,

ELIZABETH H. BOARDMAN.

BURLINGTON, VT., *February 25, 1974.*

Re amnesty hearings.

Mr. WILLIAM DIXON,
House Judiciary Committee, Rayburn Building,
Washington, D.C.

DEAR MR. DIXON: Louise Ransom suggested I send you a prepared statement about why I favor a universal and unconditional amnesty. My statement is enclosed and I would like to speak before the subcommittee as a witness, however, I have no money for traveling expenses to Washington, D.C., due to the fact that my husband was in prison and I was living on welfare until February 1.

May I suggest Lewis Simon as a potential witness? He's currently in the stockade at Fort Dix.

It is too late for amnesty to do much good for John and I; John was released February 1 from prison, where he served nine and one-half months of a one-year sentence for refusing to join the Army. Nothing the government could do would make up for that time in our lives, but a universal and unconditional amnesty will mean a great deal to the half a million young men who are still being punished as a direct result of their opposition to the Vietnam war. A universal and unconditional amnesty will benefit all Americans.

First of all, I would like to tell Congress more about my family. John and I agreed when we were married that, once we had a child, he would be the wage earner in our family, and I would be a full-time wife and mother. Like many others, we learned quickly that it is not easy to support even a small family on one income. But John took his responsiblity as husband and father seriously; he worked steadily for the two-and-one-half years prior to his imprisonment, not even taking a weeks vacation in all that time. We did without many material possessions (An automobile, a clothes dryer, excess clothing, etc.) that most people consider necessities because we both believed in the importance of maintaining the traditional family unit.

When John left for prison I applied for welfare, deciding that it was especially important for me to remain a full-time mother while my husband was away. I

felt guilty about living on welfare when I knew that so many others needed it more than I did, but under the circumstances I had few alternatives. My family has certainly not benefited from John's imprisonment and I seriously doubt that Americans are any better off because of it.

Over 7,000 men have already been convicted for violations of the Military Selective Service Act and almost 40,000 others face future prosecution for the same "crime." Even though the draft system has been suspended and the war has officially ended, indictments are still being issued against draft resisters.

A year ago I would have been pleased with a conditional amnesty or a limited amnesty for only those draft resisters who had stayed in the United States, but while John was away I did a lot of serious thinking and learned a great deal about the amnesty issue. I have always felt empathy for the men who went to Canada rather than join the army because that is what I wanted to do; John would not consider it. The men who went to Canada are no more immoral or criminal than those who years ago came to the United States in order to escape religious or political persecution in Europe. And when amnesty is granted to those who stayed in this country it must also be granted to those who chose to leave the United States, for they are no more "guilty" of refusing to join the army than those who stayed here.

A year ago I agreed with the majority of Americans that desertion from the military was a serious offense, but as I took a closer look at the military and the Vietnam war, I began to realize that if amnesty is to mean anything at all it must include those who "deserted" the military. When I first became aware of the war in Vietnam I discovered that almost everyone had a different theory about why we were there and when I dug deeper I discovered that no one could tell me exactly why we were there. Although I am a woman and did not have to worry about being drafted, I did some serious thinking. I do not claim to be a pacifist, but there is one thing I am sure of: If I ever kill another human being, I intend to know exactly why I am doing it and I intend to know that there is no other possible course of action available to me. I think many war resisters feel the same way. But many young Americans felt differently about the Vietnam situation. Their reasoning went like this: "I do not understand why we are fighting in Vietnam but I believe in my country, therefore I will join the army if I am drafted." Of course the wealthier young men, before the advent of the lottery system, had college deferments and the lucky ones never came close to being drafted either before or after the lottery, so they escaped the moral dilemma others faced. Many poor and/or uneducated individuals joined the army simply because they were not aware of any alternatives. But when the young draftees got firsthand information about the military and the Vietnam situation, many of them could not take it. A large number of soldiers began using narcotics (not marijuana, real narcotics) in Vietnam. Others, with more courage or self-respect, chose to quit the military. They did not run because they were afraid of fighting; they quit the military because they could not accept the moral responsibility for the actions committed by the military. As a result, a majority of them received less than an Honorable Discharge, a label which constitutes a life-long punishment. A universal and unconditional amnesty is needed to clear their records and establish uniform discharges for all veterans.

I have read that the majority of Americans believe we should never have become involved in the internal affairs of Vietnam: why, then, are we punishing men who felt the same way while the war was going on? Why do we continue to spend the taxpayers money to track down and try men whose only "crime" was simply living according to their beliefs? What can society hope to gain by imprisoning these men? If the morale of the military is low, it is not because men refused to fight, but because men could not believe in what they were supposedly fighting for. The fact that hundreds of thousands deserted the military in Vietnam is not the cause of low morale in the military, but rather a symptom of it.

Americans are not cowards; history proves that when Americans believe a particular war is necessary and just, they fight. And if the United States was ever in serious danger the "draft dodgers" and "deserters" would probably be the first to volunteer to fight, just as their fathers rushed to the nearest recruiting station to enlist during World War II.

Sincerely,

KATHLEEN A. BERGLUND.

MINNESOTA CLERGY & LAITY CONCERNED,
Minneapolis, Minn., February 28, 1974.

Please include the enclosed resolutions from Minnesota Religious and Political bodies in the record of the upcoming Congressional Hearings on Amnesty, Mar. 7–11.

We in Minnesota are anxious for it to be known there is a growing sentiment here for *unconditional* amnesty. This amnesty would include draft resisters, deserters, persons convicted by courts-martial for military offenses not punishable under civilian law, veterans with less than honorable discharges, and civilian protester and resisters to the war, thus allowing full restoration of all civil, political, property and other rights.

I've also included the research we have done here in Minnesota on the number of Minnesotans who would benefit from an unconditional amnesty. Please include this information in the record of the upcoming Congressional Hearings on Amnesty. We feel this is important information because of President Nixon's insistence that an amnesty would affect "only a few hundred" in this country.

Thank you for your assistance. We will be anxiously awaiting the report from this committee.

In Peace and Justice,

CAROLE NELSON,
MCLC Staff.

MINNESOTA RELIGIOUS AND POLITICAL RESOLUTIONS ON AMNESTY

[Minnesotans for Amnesty, Coordinated by Minnesota Clergy & Laity Concerned, Minneapolis, Minnesota]

STATEMENT ON AMNESTY

Priests Senate of the Archdiocese of St. Paul/Minneapolis, August 16, 1973, therefore be it

Resolved, That the Senate of priests instruct the chairman of the Justice and Peace Committee to appoint delegates to accompany in the name of the Senate the Minnesotans for Amnesty Committee in their meetings with congressmen and senators.

Be it further resolved that the Senate endorse the petition of the National Clergy & Laity Concerned on Amnesty.

The following is the text of the National Clergy & Laity Concerned's Amnesty petition adopted by the Priests Senate.

For all those whose opposition to the war in Indochina brought them into conflict with the laws of the Government, we ask amnesty. We call upon the Congress to enact amnesty in its legislative authority to determine what is the law. We call upon the President to declare amnesty by his executive authority.

Amnesty is not pardon. In judicial tradition, amnesty forgets or blots out the offense for the sake of reconciliation and a new beginning. Let us remember in proclaiming amnesty we affirm our tradition of defense of conscience, the duty of individuals to judge for themselves what is right in the face of conflicting duties, and the foundation of our society on higher moral law.

This war has brought no heroes but only victims. Therefore let us not be vindictive toward one group to assuage the suffering of others. We are making peace with our enemies, let us be reconciled among ourselves.

We may be brought together again only if redress is provided for those who had to face jail or exile for their convictions. Let all those who are convicted be set free and all those facing prosecution or who might be prosecuted be immunized from further jeopardy and all records wiped clean. For all deserters, draft violators, and those accused of civilian acts of resistance let there be a new beginning.

Let us amnesty also all those who, because of the war, were brought into extenuating circumstances in which they breached civilian or military regulations or were denied the full protections of due process. For the half million veterans who are now being punished for life by other-than-honorable discharges, let their records be corrected to make them eligible for benefits that would facilitate a more hopeful future.

Religious tradition teaches that "you should not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudges against the sons of your own people . . ."

We cannot restore to life our dead soldiers, nor undo the hurts and wounds of others. We cannot undo the devastation of the lands and people of Indochina. We can repent and work for post-war healing. An unconditional amnesty would free us for a responsible and serious effort to rebuild our divided people.

STATEMENT ON AMNESTY

(Minnesota Annual Conference of the United Methodist Church, June 14, 1973)

Whereas the Minnesota Annual Conference of the United Methodist Church is an expression of the Body of Christ which has been commissioned with the work of reconciliation and;

Whereas we as God's United Methodist people in the state of Minnesota abhor war with its destructive, divisive affects and;

Whereas the American Prisoners of War who were the hostages of injustice are now returned to their homes, therefore be it

Resolved, That the 1973 Minnesota Annual Conference go on record urging the Congress of the United States to grant full and unconditional AMNESTY to all persons who resisted the war in Southeast Asia, including those whose legal status is rendered uncertain by the draft, those in prison, those in exile, those in judicial process and all those who were less than honorably discharged and whose civil rights and privileges were thereby impaired. Be it resolved also that this amnesty be extended to all returned Prisoners of War as well as officers and men of the Armed Forces who served in Southeast Asia at any time during the Vietnam War and who have, in obedience to orders or the spirit of the military duties imposed upon them, violated the norms of peace and international law governing warfare.

Whereas the 1972 Book of Discipline of the United Methodist Church, Social Principles section V, paragraph B, states, "We assert the duty of churches to support everyone who suffers for causes of conscience, and urge governments seriously to consider restoration of rights to such persons while also maintaining respect for those who obey." Therefore be it

Resolved, That the 1973 Minnesota Annual Conference recommends, and we urge United Methodists in the state of Minnesota to support action by the President and/or Congress to grant amnesty, without qualifications or conditions, to all who are in legal jeopardy or exile directly related to the war in Southeast Asia.

God alone knows what finally determines the actions of human beings, and all of us know that few of us do anything for one reason alone.

Therefore we feel it unwise to attempt to judge the motives of those persons to be given amnesty, just as we do not presume to judge the motives of those who served in the military.

We do not dishonor but respect the consciences of those who fought and died. We see amnesty, not as a matter of forgiveness, but as one step toward the reconciliation of our society.

A CALL FOR RECONCILIATION AMONG NATIONS AND THE RELEASE OF ALL PRISONERS OF WAR

Together with religious leaders from all parts of our Nation and, indeed, all parts of the world, we call upon our Government to take prompt and specific steps to help transform the climate of hostility which has been generated at home and abroad as a result of its military involvement in Southeast Asia into a climate of reconciliation and understanding.

For several years, the families, congregations, and communities of our Nation have been divided over the rightness or wrongness of their Government's military actions and countless human sacrifices have been made in both their support and opposition. Among those who have experienced the greatest hostility and been called upon for the greatest sacrifice have been our young men who have been forced to choose whether or not to serve in their Nation's military forces. Ironically, both those who have served and those who have refused to serve have found themselves among the chief victims of our Government's policies.

Without minimizing the seriousness of the moral and spiritual implications of our Government's actions in Southeast Asia, the time has come now to leave the judgments of the rightness and wrongness of those actions to God and to history.

This is a time for new kinds of actions—including acts of forgiveness, generosity and good will regardless of who has been right and who has been wrong. Among other things, it is a time for healing the wounds which we have inflicted upon ourselves as a Nation and restoring the spirit of national harmony, loyalty and honor which has been cherished by Americans for nearly two hundred years. It is a time for conscious acts of affirmation and compassion toward those individual Americans—especially those young men who have been confronted with the moral, physical and social hazards of military service—who have borne the burdens of our Government's policies.

Recognizing that all of the Americans who have been called to military service during the period of the war in Southeast Asia deserve our special support and understanding, we are urging the President, the Congress and the Courts of our Nation to offer and provide humane treatment to those Americans who have become, in one sense or another, "prisoners of war." We point out that the "prisoners of war" include not only the hundreds of gallant men who are currently being held captive by foreign governments but also thousands of other men who have been imprisoned or forced into exile by our own Government because of their opposition to its military policies. We also point out that both official Government policies and general public attitudes have changed considerably as the full impact of the war in Southeast Asia has become known among our citizenry.

We call for acts of courage and compassion by all three branches of our national Government that will effect the prompt and plenary release, rehabilitation and return of all of these prisoners as both a demonstration of the sincerity and seriousness of its quest for peace in Southeast Asia and as an integral part of a national and international program of reconciliation and good will amongst all the peoples of the earth.

Approved by the Committee on International Relations, Minnesota Council of Churches, December 14, 1972.

MINNESOTA CLERGY AND LAYMEN CONCERNED AMNESTY CAMPAIGN

Statement of Philosophy

Amnesty is a troublesome issue which directly affects the lives of over one-half million Americans who have faced or may face criminal penalty as a result of their oppostition to the Indochina War.[1] The word "amnesty" is derived from Greek and French words meaning "to forget". It calls for our intentional overlooking of the fact that the law has been broken. Its purpose is to serve justice. It has been employed in many instances during the course of history by governments which sought to heal deep national division following war and overt civil strife. Despite the difficulty of overlooking the violation of law, we can certainly agree that there are cases in which this should be done. For example, a man hears cries for help from someone drowning in a lake. While running to the shore, he passes a "No Trespassing" sign. Would justice be served by punishing this violation of the law? Clearly not, since there was a compelliug reason for breaking the law. To grant amnesty in such a case, to overlook the violation of law is to preserve life and would clearly serve justice.

To grant amnesty to all those persons who broke laws as a result of their opposition to the Indochina War is similar to our example where amnesty was granted for action taken to preserve life. In this case, however, many people face criminal prosecution not for what they did, but for what they did not do. Almost all of them refused to follow orders of the Selective Service System or military commanders because they could not participate directly or indirectly in the killing of Vietnamese. They were compelled to violate the law in response to their

---

[1] When we speak of amnesty for persons who broke laws as a result of their opposition to the Indochina War, we mean :

a. the 60–100,000 such United States citizens who would be subject to criminal prosecution if they would return to this country ;

b. the 200,000 men and women in America who are 1) fugitives from the draft or military, 2) subject to prosecution, 3) awaiting trial, 4) in civilian or military prison, 5) at some other stage of the penal system ;

c. those who have completed their sentence but have not had their full civil rights restored ;

d. the large number of civilians charged with antiwar acts ; and

e. the 300,000 men who received less than honorable discharges.

In total, a half-million people could freely contribute to our future if they did not face criminal penalty.

consciences. Those who responded to the war in this way stand with those who upon hearing cries from the lake run to the shore to provide help. By their actions, both affirm life by preventing its destruction.

In calling for amnesty we believe that each of us has the right to refuse to destroy life. No one should be punished for deciding in any set of circumstances not to kill. To grant amnesty in this context is to uphold the interest of justice by preserving this right.

There is another need for amnesty that goes beyond each man's motives. Today we are faced with an overwhelming need to seek wholeness for our broken society so that community might become possible. At no time since the Civil War have we as a nation been so divided. This has been the result of the social disintegration which has been brought to light during the last eight years' "war over the war". If we would build peace and provide justice both at home and abroad, we must create a healing environment which nurtures a broad diversity of thought and action.

To grant amnesty in this context is to take the first step toward restoration of our society and the societies of Indochina. To grant amnesty is to take the first step toward national reconciliation which is necessary if we are to undertake meaningful initiatives for world peace. Only after we grant amnesty can we be truly open to the free flow of ideas which is needed to explore less destructive means to defend freedom. To grant amnesty is to make community possible.

Want to help? Get in touch with us: Minnesota Amnesty Campaign, Minnesota Clergy and Laymen Concerned, 122 West Franklin Avenue, Minneapolis, Minnesota 55404, Phone (612) 338–7033.

STATEMENT ON AMNESTY

(Adopted by the DFL State Central Committee, June 9, 1973)

Whereas the United States is a pluralistic society in which the spirit of RECONCILIATION must prevail for the resolution of many differences and;

Whereas the differences that did divide this nation during the long and still continuing agony of the VIETNAM WAR have been largely resolved by the now widely circulated revelations showing that war to have been a tragic violation of both law and trust and;

Whereas AMERICAN PRISONERS OF WAR who were the hostages of injustice are now returned to their homes, therefore; be it

Resolved, That the DFL State Central Committee memorialize its CONGRESSIONAL DELEGATION as well as the CONGRESS OF THE UNITED STATES to grant full and unconditional AMNESTY to all persons who resisted the war in Southeast Asia, including those whose legal status is rendered uncertain by the draft, those in prison, those in exile, those in judicial process and all those who were less than honorably discharged and whose civil rights and privileges were thereby impaired; therefore be it

Resolved, That this amnesty be extended to all returned PRISONERS OF WAR as well as officers and men of THE ARMED FORCES who served in Southeast Asia at any time during the VIETNAM WAR and who may have, in obedience to orders or the spirit of the military duties imposed upon them, violated the norms of peace and international law governing warfare.

You can help work for universal, unconditional amnesty. Write or call: MINNESOTANS FOR AMNESTY, MINNESOTA CLERGY & LAITY CONCERNED, 122 W. Franklin Ave., Minneapolis, Minnesota 55404. Phone: (612) 871–8033.

MINNESOTANS WHO NEED AMNESTY

Since the beginning of our Minnesotans for Amnesty Campaign in June of 1973 we have had many requests for statistics on the number of Minnesotans who would be affected by a universal, unconditional amnesty. In response to this a Research Team has worked for the past four months obtaining accurate statistics where possible and estimating Minnesota figures from total U.S. figures where state catagory breakdowns were unavailable. The following report is the result of that research.

SELECTIVE SERVICE VIOLATIONS (DRAFT RESISTERS)

Research Methods

1968–1969 figures were obtained from the records of Minnesota Draft and Military Help.

Sept. 1970–Sept. 1971 figures were obtained from the card files of the U.S. Clerk of Court offices in St. Paul, Minneapolis, Duluth (the three federal courts in Minnesota). Names of resisters for this period had previously been obtained from the U.S. Attorneys' office by Minnesota Draft and Military Help.

Jan.–August 1970, Oct. 1971–1973 figures were obtained from the books of docket sheets in the U.S. Clerk of Court offices in St. Paul, Minneapolis, Duluth. (These sheets are summaries of each federal grand jury indictment.)

Results

Total federal indictments 1968–1973: 673.—dismissals—344; acquittals—69; convictions—212; and unconcluded—48.[1]

CIVILIAN PROTESTERS ARRESTED FOR ANTI-WAR ACTIONS

Research Method

In this category we gathered information from various people in the Twin Cities community and wrote letters to folks in 12 communities outstate. While we cannot claim 100% accuracy we do believe these figures are very close to the actual numbers.

Results

Total civilian protesters arrested from 1968–1973: 280.—War Tax Resisters—4; Draft Board Actions—10; Twin City Civil Disobedients—79; Outstate Civil Disobedients—181; Marshall—166; and St. Johns University/St. Cloud—21.[1]

MILITARY DESERTERS

Research Method

Representative Donald Fraser inquired at the Department of Defense and the Veterans Administration and was told that information on deserters from the military was not available by state.

The U.S. figure here is from the Department of Defense. According to *The Almanac of American Politics*, 1974 Minnesota is 1.88% of the total U.S. population. The following statistics are based on these figures.

Results

U.S. total military deserters—32,000.
Total Minnesota military deserters—602.[1]

LESS THAN HONORABLE DISCHARGES

Research Method

Representative Donald Fraser inquired at the Department of Defense and was told that information on less than honorable discharges from the military was not available by state.

The U.S. figure here is from the Department of Defense. Minnesota statistic is figured as above.

Results

U.S. total less than honorable discharges—450,000.
Total Minnesota less than honorable discharges—8,460.[1]

---

[1] People wishing statistics on draft resisters in their area can get them from the Minnesota Clergy and Laity Office, 122 W. Franklin Ave., Minneapolis 55404 or call us at (612) 871–8033. Please include the number of the judicial division you are in (ask your county courthouse).

NONREGISTRANTS

Research Method

U.S. Department of Statistics estimates that 2 million men turn eighteen every year. In a telephone interview in Jan. 1974 Col. Knight, head of Selective Service in Minnesota reported that at least 1% of Minnesota men turning eighteen each year didn't register with Selective Service. The following statistics reflect these figures.

Results

U.S. male population turned eighteen 1968–1973—10 million.
Minnesota male population turned eighteen 1968–1973—188,000.
Total Minnesota nonregistrants 1968–1973—1,880.—(This may be a conservative figure because Byron Pepitone, head of U.S. Selective Service estimated a 10% rate of nonregistration (N.Y. Times, June, 1973).

MARCH 1, 1974.

Mr. WILLIAM D. WICK
Washington, D.C.

DEAR MR. WICK: Thank you for your recent letter regarding the amnesty hearings scheduled for March 7, 8, and 11. I also appreciate receiving a copy of your excellent article from the Buffalo Law Review. If it is the wish of the Subcommittee, this article will be inserted in the printed record of the hearings.

Sincerely yours,

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Mr. WILLIAM DIXON,
House Judiciary Committee, Rayburn House Office Building, Room 2137, Staff Room 4, Washington, D.C.

DEAR MR. DIXON: It is my understanding that a Subcommittee of the House Judiciary Committee intends to conduct hearings on the issue of amnesty on March 7th and March 9th.

I authored an article on the subject of amnesty titled, "The Case for an Unconditional Universal Amnesty for Draft Evaders and Armed Forces Deserters," which appeared in 22 BUFFALO L. REV. 311 (1972).

I am enclosing a copy of that article for the Subcommittee's use, either as reference material or as a part of the printed record of the hearings. As long as it is indicated that it was originally published in the BUFFALO L. REV. there is no problem with re-publication.

Please do not hesitate to contact me if you have any questions or comments regarding the article.

Sincerely,

WILLIAM D. WICK.

THE CASE FOR AN UNCONDITIONAL, UNIVERSAL AMNESTY FOR DRAFT EVADERS AND ARMED FORCES DESERTERS

"What does the soldier want"?
"To kill! To kill!"
"What are you?"
"Soldiers!"
"What are you, really?"
"Tigers!"
"What do you eat?"
"Raw meat!"
"What do you drink?"
"Red blood!"
"Whose blood?"
"Gooks' blood!" [1]

---

[1] Total Minnesotans who will benefit from universal, unconditional amnesty: 11,895.
[1] A. Stapp, Up Against the Brass 20–21 (1970).

That chant reverberates throughout Fort Sill when basic training drills are conducted. Many soldiers learned their basic training lessons well and applied their knowledge in Vietnam.

William Whitmeyer, for one. He served with the 172nd Armored Regiment in Vietnam. One memory of his service in Vietnam is his participation in the murder of twelve Vietnamese villagers. Some of the villagers were women, and all of them were more than sixty years old.

No one has to answer for it. I never heard any more about it, except in the *Stars and Stripes* I read that the 69th Armored near Bong Son has killed twelve VC. The officers thought it had been a good way to release tension and get some kills. They were always pushing our unit for kills, more kills.[2]

Jerry Samuels was in the 65th Engineers Battalion in Vietnam. His unit also slaughtered civilians—even after battles subsided:

"Things calmed down, and me and one of the buck sergeants and two other guys took these four chicks in the elephant grass outside the perimeter, and we were all fooling around. We balled these chicks. They were forcibly willing—they'd rather do that than get shot. Then one of the girls yelled some derogatory thing at the guy who'd balled her, in Vietnamese, but he knew what it meant. He just reached down for his weapon and blew her away. Well, right away the other three guys who were there, including myself, picked up our weapons and blew away the other three chicks. Just like that. It was a spontaneous, instantaneous type thing." [3]

The experiences of William Whitmeyer and Jerry Samuels cannot be dismisesd as unfortunate aberrations of the Vietnam war. Similar incidents have occurred frequently in Vietnam, and there is evidence that they "were a logical outgrowth of established United States military tactics." [4]

Whitmeyer and Samuels did not stay in Vietnam to continue to carry out United States military tactics. They deserted, and both are now exiles in Canada.

They are not alone. There are thousands of deserters in Canada and other countries who have had similar experiences.[5] And there are thousands of draft evaders who did not need direct experience in the war to decide that they wanted no part of it.[6]

Since these men face legal sanctions if they return to the United States, amnesty for the exiles "is an issue which plainly is going to have to be dealt with in Washington."[7] Legislation to provide amnesty for draft evaders recently has been

---

[2] R. Williams, The New Exiles 270 (1971).

[3] *Id.* at 276. *See, e.g.*, Vietnam Veterans Against The War, The Winter Soldier Investigation: An Inquiry into American War Crimes (1972); T. Taylor, Nuremberg and Vietnam: An American Tragedy (1971); S. Hersh, My Lai 4 (1971).

[4] Comment, *My Lai Massacre: The Need for an International Investigation*, 58 Calif. L. Rev. 703, 724 (1970). Three military practices in particular are noted as encouraging or condoning the mistreatment of civilians:

"In the first place, the Army designates entire areas of suspected enemy activity as "free fire zones," in which any person, regardless of sex or status, is automatically considered a Viet Cong sympathizer and can be killed at a soldier's virtually unbridled discretion. Moreover, United States military leaders encourage high "body counts" as evidence of war gains; some brigade commanders run contests in which privileges are awarded to companies that register the most kills. . . .

"Secondly reports of various informed sources allege the use of torture, maiming, terror, and murder as relatively routine United States policies, and assert that license to commit such atrocities originates in "orders from higher up."

"Third . . . some sources contend that the United States air war in Vietnam is conducted with utter disregard for civilian welfare. They cite the repeated American bombing attacks upon a Vietnamese leprosarium and upon the Huong Phuc school as examples of the targets pounded daily during the raids of North Vietnam. *Id.* at 725.

[5] In one study of twenty draft evaders and ten deserters, the following reasons were given for rejecting a role in the war:

1. They view participation in the Vietnam War as immoral; they said that they would feel ashamed to have to admit to their children that they had participated.
2. Having been raised to cherish autonomy, self-direction, and individual responsibility, they reject authoritarianism and question the motives underlying the U.S. use of power.
3. They see the Vietnamese, and other people, as human beings and don't buy the Madison Avenue techniques of dehumanizing them. . . . [T]hey see much of this as racist propaganda.
4. They perceive war in the nuclear age as barbaric and stupid.
5. They condemn the U.S. value system and argue that today's society is not worth saving. R. Williams, *supra* note 2, at 337–338.

[6] Estimates of the number of exiles are as follows: 70,000, Time, Jan. 10, 1972, at 15; 75,000, Newsweek, Jan. 17, 1972, at 19; 100,000, R. Williams, *supra* note 2, at 4.

[7] Wicker, *In the Nation: The Cost of Conscience*, N.Y. Times, Feb. 13, 1969, at 44, col. 4.

introduced in the Senate and House of Representatives.[8] The public debate on on the issue of amnesty is just beginning.

One hesitates to analyze the issue of amnesty in a "scholarly" manner, fearing that the analysis may conflict with the initial, emotional response that no humane nation could punish men like Whitmeyer and Samuels because they refused to continue to kill in Vietnam; too often one has "the eerie feeling that the legal scholars are not concerned with the same war as described by observers like Fall and dramatized nightly on Huntley-Brinkley." [9]

Fear not. The "scholarly" analysis for amnesty only confirms the more emotional reaction in favor of amnesty. Before directly proceeding with that analysis, however, a brief examination of the two forces which drove so many Americans into exile is necessary. Those forces, of course, are conscription and the war in Vietnam.

I. CONSCRIPTION

A. The Constitutional Opposition and Subsequent Tradition Against Conscription

There is a widespread belief in America that compliance with conscription laws is an American's time-honored obligation to his country, and that resistance to the draft is "un-American." [10] However, the opposite is actually the case: the American tradition is one of strenuous opposition to all forms of involuntary servitude, including conscription.[11]

Although the colonial militia system has been cited as a precedent for conscription, that system was not similar to modern conscription.[12] In fact, conscription was one of the few issues on which there was unanimity at the Philadelphia Constitutional Convention in 1787.[13] Conscription "was so impossible to imagine, given the circumstances and ideological climate of the times, that no voice was raised against it." [14] Even those delegates who wanted the strongest powers for the central government excluded consideration of the power to conscript.

It was not until the War of 1812 that the first major effort to enact a draft law occurred. Secretary of War Monroe proposed to "call a designated number out of the population between the ages of 18 and 45 for service in the army." [15] The

---

[8] Three different proposals for amnesty have been embodied in legislative form:

S. 3011, 92d Cong., 1st Sess. (1971), is the bill introduced by Sen. Taft (R-Ohio). It does not cover deserters, and draft evaders must work for three years at alternate service before receiving amnesty.

H.R. 12417, 92d Cong., 2d Sess. (1972), is the bill introduced by Rep. Koch (D-N.Y.). It does not cover deserters, but the required period of alternate service is two years rather than three.

H.R. 14175, 92d Cong., 2d Sess. (1972), is a bill introduced by Rep. Abzug (D-N.Y.). It provides a general amnesty for deserters as well as draft evaders, and it is unconditional.

Amnesty opponents have introduced resolutions in Congress to prohibit amnesty for draft evaders and armed forces deserters. Rep. Garmatz (D-Md.) introduced H.R. Con. Res. 526, 92d Cong., 2d Sess. (1972), and 17 other Congressmen have introduced identical or similar measures. The resolution provides:

"That it is the sense of Congress that no pardon, reprieve, or amnesty be enacted by the Congress or exercised by the President with respect to persons who (1) are in violation of the Military Selective Service Act because of their refusal to register for the draft and/or their refusal to be inducted, or (2) being a member of the Armed Forces, fled to a foreign country to avoid further military service in violation of the Uniform Code of Military Justice."

[9] Robertson, *The Debate Among American International Lawyers About the Vietnam War*, 46 Texas L. Rev. 898, 913 (1968).

[10] Senator Paul Fannin is opposed to amnesty because exiles "have turned their backs on their country." Letter from Senator Paul Fannin (R-Ariz.) to William Wick, Jan. 24, 1972, on file in the editorial offices of the *Buffalo Law Review*.

[11] Friedman, *Conscription and the Constitution: The Original Understanding*, 67 Mich. L. Rev. 1493 (1969).

[12] The analogy between the militia system and conscription was drawn in Arver v. United States, 245 U.S. 366, 379–80 (1917). However, Friedman cites the following distinguishing characteristics of the militia system:

"(1) the primary compulsory aspect of the militia was the requirement to train; (2) the militia was fundamentally of defensive force; (3) continuous service was required solely during period of emergency; (4) service outside the colony was for outcasts only; and (5) the trend was away from compulsion in the years preceding the Revolution." Friedman, *supra* note 11, at 1506.

[13] Friedman, *supra* note 11, at 1514. Even Edmund Randolph, Governor of Virginia, was opposed to conscription. Randolph expressed the views of Federalist delegates who wished to concentrate power in the federal government, but even he felt that conscription "stretched the strings of government too violently to be adopted." *Id.* at 1513.

[14] *It.* at 1519.

[15] Arver v. United States, 245 U.S. 366, 385 (1917).

prevailing view in Congress, however, was that the federal government did not have the power to conscript, and the proposal was defeated.[16]

In the midst of the Civil War, the first American draft law was passed.[17] The first American draft resistance occurred shortly thereafter. Although the Act stipulated that a drafted man could hire a substitute or literally buy his way out of the draft,[18] many men could not afford to purchase their way out of forced service. As a result, riots against the draft occurred throughout the country, with the largest protest in New York City causing 1,200 deaths.[19] In addition, some state and local governments supported the citizens' opposition to the new conscription law.[20]

The most popular means of opposing the draft, however, was draft evasion. It was so popular that a new word—"skedadling"—was created to describe it. New towns were built in Canada to accommodate thousands of skedadlers."[21]

In April, 1865, the draft law expired and conscription was not used again for more than half a century. In 1917, United States entry into World War I prompted a government proposal to conscript again. Even though war had already been declared on Germany, opposition to the draft was vocal. Speaker of the House Champ Clark proclaimed:

"I protest with all my heart and mind and soul against having the slur of being a conscript placed upon the men of Missouri. In the estimation of Missourians, there is precious little difference between a conscript and a convict.[22]

Nevertheless, the Selective Service Act was passed on May 18, 1917.[23] The draft again lasted only as long as the war, however, and throughout the 1920's and 1930's proposals for conscription were consistently defeated in Congress.[24]

In 1940, after the Nazis had defeated the French, Congress adopted a draft—the first peacetime draft in American history.[25] The draft was extended three times following the war, but it finally expired on March 31, 1947. Conscription was reintroduced sixteen months later when Congress passed the Selective Service Act of 1948. In 1951, the title of the Act was changed to "The Universal Military Training

---

[16] Friedman, *supra* note 11, at 1514.

The debate over the draft proposal in 1814 was the occasion for one of Daniel Webster's famous speeches against the draft. An excerpt is worth noting:

Is this, sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our Constitution? No, sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasure and their own blood a Magna Charta to be slaves. Where is it written in the Constitution . . . that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it? 14 The Writings and Speeches of Daniel Webster 61 (1903).

[17] Act of Mar. 8, 1863, ch. 75, 12 Stat. 731.

[18] *Id.* at § 13, 12 Stat. 733.

The substitution option caused one historian to conclude that the draft law "was not a conscription bill in any general sense; it was merely a piece of class legislation designed, even in the last resort, merely to stimulate mercenary enlistments and to match the rich man's dollars with the poor man's life." 1 F. Shannon, The Organization and Administration of the Union Army, 1861–1865, at 308 (1928).

[19] Friedman, *supra* note 11, at 1545.

[20] The state of Delaware and the city of Troy, New York, for example, passed laws authorizing the local government to pay the commutation fee for residents, and the Governor of Massachusetts asked the Secretary of War to suspend operation of the draft in that state for six or seven weeks because a sufficient number of substitutes could not be found. *Id.*

[21] 2 F. Shannon, *supra* note 18, at 184–85. The total number of "skedadlers" may have been as high as 200,000. *Id.*

The Supreme Court did not hear any cases challenging the Civil War draft law, but Chief Justice Roger Taney did prepare an outline of an opinion declaring the law to be unconstitutional. Friedman, *supra* note 11 at 1546.

A strange case did come before the Pennsylvania Supreme Court on the draft law, however. In Kneedler v. Lane, 45 Pa. 238 (1863), three men sued the local enrolling board to enjoin the board from enforcing the conscription law. On November 9, 1863, the court announced in a 3–2 decision that the law was unconstitutional, and the injunctions were issued. The Chief Justice's term expired on December 12, 1863, however, and the Chief Justice (who had voted with the majority) was replaced by a man named David Agnew, who favored the draft. The government moved to vacate the injunctions before the Agnew court, and on January 16, 1864, the court's initial order was vacated by a predictable 3–2 margin. Friedman, *supra* note 11, at 1548–49.

[22] H. Peterson & G. Fite, Opponents of War, 1917–1918, at 22 (1957).

[23] 40 Stat. 76 (1917). The Act was formally titled "An Act to authorize the President to increase temporarily the Military Establishment of the United States." *Id.*

[24] Friedman, *supra* note 11, at 1552.

[25] 54 Stat. 885 (1940). This act was also upheld by the courts. *See, e.g.*, Tatum v. United States, 146 F.2d 406 (9th Cir. 1944); United States v. Herling, 120 F.2d 236 (2nd Cir. 1941).

It is noteworthy that the Congressman who introduced the 1940 draft bill made it clear that the act was "not an attempt to establish a permanent policy in the United States." Gillam, *The Peacetime Draft*, 57 Yale Rev. 495, 502 (1968).

and Service Act," and from 1951 to 1971 the draft was extended by Congress every four years.[26] In 1971, the draft was extended for two years.

Thus, American conscription is a modern institution. During the first 150 years of the nation's history, draft laws were in effect for only four years. Since World War II, however, Congress has maintained the draft.[27]

B. *The Modern Draft: Involuntary Servitude Unfairly Administered*

The reason our Constitution-makers did not even consider federal conscription is a simple one. As Senator Mark Hatfield put it, "[c]onscription is involuntary servitude. It is complete usurpation by the Government of an individual's freedom of choice." [28]

Originally conscription was intituted only while America participated in a declared war,[29] today, the draft has come to justify itself in the name of "national security." [30] Regardless of the justifications, however, one fact remains: conscription is involuntary servitude.

Realizing the totalitarian nature of conscription per se, it is noteworthy that even the administration of the draft in the United States is unjust. Administrative inequities serve to exacerbate the inherent injustice of conscription.

Local draft boards are the heart of the Selective Service System, and the boards are also the System's major weakness. Board members are normally retirement age, middle-class, and conservative.[31] Minority groups are so poorly represented on draft boards that it is misleading to use the term "represented." [32] The composition of the local boards is not a peripheral concern, because the boards operate with vast discretion and low public visibility. Abuses occur frequently.[33] A categorization of abuses would require a separate article, but the most prominent merit mention.

First, the composition and autonomy of the boards insure that only a small percentage of Conscientious Objector applicants will actually be granted CO classifications.[34] As one commentator noted:

"Since most local boards considered applying for a CO classification to be no better than burning one's draft card, they constantly denied CO requests and subsequent appeals. Over 50% of the war resisters in Canada might not have gone there had draft boards even bothered to abide by the original *Seeger* decision." [35]

---

[26] It is no accident that the draft is renewed in an odd-numbered year. There are neither Congressional nor Presidential elections in odd-numbered years.

[27] The rationale for retaining the draft in the decades following World War II has come under frequent attack. One commentator has argued that the draft has been detrimental to our security:

"The fact is the United States is the most powerful state in the whole history of the world, both in an absolute sense, and in relation to contemporary states. There is no threat to us, no challenge to our national interest. Yet, in order to "defend" ourselves, we are committed to a system of "national security," introduced in 1947, which has come to control the national priorities and much of the national economy. In the process we have lost over 100,000 American lives; we have caused the destruction of at least two million and perhaps as many as four million non-Americans . . . . What kind of defense policy can that be for the nation whose arsenal equals that of most the rest of the world?" T. Reeves & K. Hess, The End of the Draft 128 (1970).

[28] Hatfield, *The Draft Should Be Abolished*, Sat Eve. Post, July 1, 1967, at 12.

[29] Mr. Justice Murphy emphasized the importance of tolerating conscription only in times of grave national duress in a 1944 dissenting opinion:

"This case presents another aspect of the perplexing problem of reconciling basic principles of justice with military needs in wartime. Individual rights have been recognized by our jurisprudence only after long and costly struggles. They should not be struck down by anything less than the gravest necessity. We assent to their temporary suspension only to the extent that they constitute a clear and present danger to the effective prosecution of the war and only as a means of preserving those rights undiminished for ourselves and future generations." Falbo v. United States, 320 U.S. 549, 555–56 (1944) (dissenting opinion).

[30] Senator Robert Dole (R-Kan.) stated that the 1971 Selective Service Act was "indispensable to the maintenance of our security and the conduct of our foreign policy." 117 Cong. Rec. 14683 (daily ed. Sept. 21, 1971).

[31] F. Stevens , If This Be Treason 60 (1970). The average age of a draft board member is 63.6 years. *Id.*

[32] Of the roughly 16,000 board members in the United States, 1.3% are blacks, 0.8% are Puerto Ricans, 0.7% are Orientals, and 0.1% are American Indians. *Id.*

[33] That such abuses are intolerable when a board literally has the life of the registrant in its hands is obvious. *See* Walsh v. Local Bd. No. 10, 305 F. Supp. 1274 (S.D.N.Y. 1969).

[34] R. Williams, *supra* note 2, at 41.

Former draft board member James Bailey cited an example of the bias toward CO applications. A youth seeking CO status who was Catholic was told by a board member, "Well, I'm a Catholic too and I'm not a conscientious objector. Are you a better Catholic than me?" Washington Post, Sept. 8, 1972, at 3, col. 2.

[35] *Id.*

Second, the procedures of the System do not meet essential standards of fairness under the due process clause: representation by attorneys has been forbidden; [36] neither local boards nor appeal boards are required to give reasons for their decisions; [37] there is no opportunity to confront or cross-examine adverse witnesses; [38] and it is doubtful that draft board hearings are permitted at a reasonable time.[39] These defects existed prior to the Vietnam war, but the demands of the war caused the System to stagger "with resultant secretiveness and indeed recalcitrance. A 'fair hearing' in most boards became an unattainable illusory concept of the law makers." [40]

Third, the System has been utilized to accomplish objectives other than inducting young men into the army. The draft has been used to "channel" men into life styles determined by the government,[41] and it has been used as a weapon to stifle dissent.[42]

Finally, of course, the draft has been used to provide manpower for American intervention in a foreign conflict. It was the draft that made the Vietnam war possible.[43]

II. THE WAR IN VIETNAM

A. *United States Entry and Conduct in the War: Illegal and Unconstitutional*

Three compelling arguments that United States involvement in the war is illegal require brief examination: that the United States has violated international law in intervening in Vietnam; that the United States has violated the Constitution in intervening in Vietnam; and that the United States has violated international law in its conduct of the war.

First, there is evidence that the United States has violated treaty obligations and international law. The United States is a party to a number of non-aggression treaties,[44] and also has ratified the Agreement of London, which stipulates that "planning, preparation, initiation, or waging of war of aggression, or a war in violation of international treaties, agreements, or assurances" is criminal.[45] Furthermore, this nation is a party to the United Nations Charter: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . . ." [46] The United States' intervention in Vietnam clearly contravenes these relevant provisions of international law.

---

[36] 32 C.F.R. § 1624.1(b) (1949).

[37] *See id.* §§ 1623.4, 1624.2(d), 1625.4, 1626.27(a), 1626.31(b) (1949).

[38] *See id.* §§ 1623.1(b), 1624.2(b) (1949).

[39] *See id.* §§ 1624.1, 1624.2 (1949). As one commentator observed:

"It is not likely that a favorable decision could come from a reluctantly performed belated interview which would require from the local board a formal reversal of its previous formal classification, implying an admission that such previous action was unjustified." Silard, *Some Comments on the Local Board Memorandum No. 41 Pre-Classification Interview*, 2 S.S.L.R. 4001, 4004 (1969).

[40] Hansen, *The Basis-in-Fact Test in Judicial Review of Selective Service Classifications: A Critical Analysis*, 37 Brooklyn L. Rev. 453, 470 (1971).

A member of the Bethesda-Chevy Chase, Md., Local Board No. 54 recently wrote a letter to the board president urging that registrants be permitted representation by attorneys at board hearings. Board member James Bailey wrote that providing counsel was "the only way to correct the shocking reputation we have for lack of fairness," and that lawyers were necessary because "the horrors we inflict on young men in what we dare to call a hearing are so well known." Bailey also told the board president that he was appealing for representation for registrants "in the name of all our neighbors' sons we have sent to be killed or maimed illegally."

Bailey was suspended from the board by the national director of the Selective Service System three months after writing the letter. *Draft Unit Critic Is Suspended*, Washington Post, Sept. 8, 1972, § C, at 1, col. 8.

[41] If the government deems it desirable to increase the number of teachers, for example, it simply defers teachers from the draft. Thus, the System is an ideal mechanism for "channeling" men into jobs deemed desirable by the state.

[42] The most famous incidents concerning the draft and dissent occurred in 1965 and 1966 when Selective Service Director Hershey decided to use his position to unilaterally stop anti-war demonstrations. At that time he stated, "[r]eclassification is quicker at stopping sit-ins than some indictment that takes effect six months later . . . and we haven't heard of any sit-ins since the one in Ann Arbor." New Republic, Dec. 25, 1965, at 7.

[43] As former Senator Ernest Gruening observed, "It was the draft that made it possible for our leaders to deceive the American people into the longest, costliest, least justifiable and most unpopular war in our history." 117 Cong. Rec. 14684 (daily ed. Sept. 21, 1971).

An author concurred: "Undeclared and unpopular wars can never be fought 10,000 miles form a nation's borders without a means of forcing men to go, a system of ensavement whereby young men are forced to serve the state and do its dirty work. . . . R. Williams, *supra* note 2, at 4.

[44] Pan American Conference, 49 Stat. 3363 (1933), T.S. No. 906; Kellog-Briand Pact, 46 Stat. 2343 (1928), T.S. No. 796; Hague Conventions, 36 Stat. 2199 (1907), T.S. No. 536; 32 Stat. 1779 (1899), T.S. No. 392.

[45] Agreement of London, 59 Stat. 1544 (1945), E.A.S. No. 472; Judgment & Sentences of the International Military Tribunal at Nuremburg (Gov't Printing Office 1947).

[46] U.N. Charter art. 2, para. 3.

Article IV of the Southeast Asia Defense Treaty notes that a member may "act to meet the common danger in accordance with its constitutional processes." [47] Even assuming that an internal struggle in a small nation thousands of miles from the United States somehow presents a "common danger" to the world's most powerful nation, America has *not* acted in "accordance with its constitutional processes."

Thus, the second argument arises: United States intervention in Vietnam is unconstitutional. The power of Congress to declare war is absolute.[48] The position of Commander-in-Chief was never intended to confer the power to declare war,[49] and the Supreme Court has consistently held that under the separation of powers doctrine only Congress can declare war.[50] Congress has not declared war on North Vietnam. This is an "executive" war which directly conflicts with the United States Constitution.[51]

The government has advanced "justifications" for the war, but they are more notable for their numbers than their merit.[52] These "justifications" have been analyzed elsewhere,[53] but the two most substantial arguments should be noted.

First, the executive branch has claimed that Congressional adoption of the Tonkin Gulf Resolution was the "functional equivalent" of a declaration of war.[54] The history of the resolution belies that view. In 1964 President Johnson emphasized that "our purpose is peace . . . the United States seeks no wider war." [55] Senators who sponsored the resolution also made it clear that it was not a declaration of war.[56] In addition, there are strong indications that Congress was deceived by the executive branch in the portrayal of the Tonkin incident.[57] Hence, even if it is supposed that Congress intended to authorize war, its authorization would be void. Most important, however, is the fact that a resolution which delegated Congress' power to declare war to the President would be unconstitutional. Congress may not delegate away its Constitutional powers.[58]

Second, the executive branch contends that Congressional appropriations for the armed forces constitute the equivalent of a declaration of war. However, many Congressmen who opposed the war nevertheless felt compelled to provide support

---

[47] Southeast Asia Collective Treaty, Sept. 8, 1954, [1955] 6 U.S.T. 81, 83, T.I.A.S. No. 3170.

[48] U.S. CONST. art. I, § 8, cl. 11.

[49] "The President is to be commander-in-chief of the army and navy of the United States. In this respect, his authority would be nominally the same with that of the king of Great Britain, but in substance, much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies—all of which the Constitution under consideration, would appertain to the legislature." THE FEDERALIST No. 69, at 448 (Modern Library ed. 1941) (A. Hamilton).

[50] *Ex parte* Milligan, 71 U.S. (4 Wall.) 2 (1866); The Prize Cases, 67 U.S. (2 Black) 635, 668 (1862); The Amelia, 5 U.S. (1 Cranch) 1, 28 (1801). *See also* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[51] "It is no more than a usurpation by the Executive of the power possessed only by Congress." Faulkner, *The War in Vietnam: Is It Constitutional?*, 56 GEO. L.J. 1132, 1136 (1968).

Mr. Justice Story's analysis indicates that this nation's founders were attempting to avoid Vietnams when they insisted that Congress have the power to declare war. Story even proposed a system whereby two-thirds concurrence of the House and the Senate would be required to declare war, to insure that it "be difficult in a republic to declare war; but not to make peace." J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 89–90 (2d ed. 1851).

[52] Eighteen government "justifications" are analyzed by Lawrence Velvel in a comprehensive article on the constitutionality of the war, and all are quite vulnerable: Velvel, *The War in Vietnam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, 16 KAN. L. REV. 449 (1968).

[53] *Id. See also* Faulkner, *supra* note 51.

[54] Velvel, *supra* note 52, at 472–73.

[55] 110 CONG. REC. 14801–02 (daily ed. June 23, 1964).

[56] Senator Brewster asked Senator Fulbright (the Senate sponsor of the resolution) if the resolution would approve "the landing of large American armies in Vietnam or China." Senator Fulbright replied: "There is nothing in the resolution, as I read it, that contemplates it. I agree with the Senator that it is the last thing we would want to do." Velvel, *supra* note 52, at 473.

[57] "The omissions and distortions of fact during the 1964 hearings were so frequent, so skillful, that one must suspect something more sinister than honest misunderstanding or accidental verbal vagueness . . . . Deception is deception, be it deliberate or unwitting, and the facts warrant conviction of the Johnson administration on this count—both for its recitation of the facts of the August 4 incident to Congress in 1964, and for its use thereafter of the Tonkin Gulf Resolution." J. GOULDEN, TRUTH IS THE FIRST CASUALTY: THE GULF OF TONKIN AFFAIR—ILLUSION AND REALITY 19 (1969).

[58] Velvel, *supra* note 52, at 478.

for troops already in Vietnam.[59] Furthermore, the appropriations justification conflicts with a Supreme Court ruling that explicit authorization is required in cases where executive action is of dubious constitutionality to insure "careful and purposeful consideration by those responsible for enacting and implementing our laws. Wthout explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government, are not endowed with any authority to decide them."[60]

Thus, logical analysis compels the conclusion that United States intervention in Vietnam is unconstitutional, even though the Supreme Court has not acted on the failure of the executive branch to abide by the Constitution.[61]

The third contention of American illegal action in Vietnam concerns the violation of the laws of land warfare. The United States is a party to treaties regulating the conduct of war,[62] and the continued bombings of North Vietnam which result in death to civilians are violations of those treaties. Other American activities, such as "search and destroy" missions, are conceivable violations as well. These violations impinge directly on individual soldiers, since the soldier is responsible for his actions even if he is ordered to commit illegal acts by a superior.[63] Where a common design is established, all persons implementing the common design are guilty of war crimes: "The United States by committing war crimes in Vietnam makes all participating soldiers guilty under international law."[64]

B. *Non-Legal Arguments Against United States Involvement in the War*

The non-legal arguments against American participation in the war in Vietnam are too well-known to require elaboration: that there was no valid reason for American involvement since no vital interests were in jeopardy;[65] that the United States intervened on the "wrong" side of a civil war, supporting the colonialists instead of those seeking freedom and independence;[66] that the United States had been fighting for a corrupt South Vietnamese government;[67] that the human costs of the war have been only peripheral concerns of United States policy makers;[68] that the war is a racist war; that it is an immoral war; that it is simply "wrong."[69] In fact, at least two United States Senators have termed the war the biggest mistake in American history.[70]

---

[59] Senator Richard Russell, in his opening statement on the Supplemental Appropriations Bill on February 16, 1966, stated: "It is important that the Senate and the Nation clearly recognize this bill for what it is: an authorization of defense appropriations. It could not properly be considered as determining foreign policy, as ratifying decisions made in the past, or as endorsing new commitments." Malawer, *The Vietnam War Under the Constitution: Legal Issues Involved in the United States Military Involvement in Vietnam*, 31 U. Pitt. L. Rev. 205, 230 (1969).

[60] Greene v. McElroy, 360 U.S. 474, 507 (1959).

[61] The argument concerning the justiciability of the constitutional challenge to the war cannot be made within the confines of this article. *See* Velvel, *supra* note 52, at 480.

[62] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949 [1955] 6 U.S.T. 3114, T.I.A.S. No. 3362; Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199 (1910), T.S. No. 536.

[63] O'Brien, *Selective Conscientious Objection and International Law*, 56 Geo. L.J. 1080, 1087–89 (1968). A soldier can be tried for violations of the laws of warfare even though he is acting within domestic law. The Nuremburg Trial, 6 F.R.D. 69, 110–11 (1946).

[64] Faulkner, *supra* note 51, at 1142.

[65] Senator Mike Mansfield (D-Mont.): "What for? Why? We will never be able to answer that question to our satisfaction, and we know it." 117 Cong. Rec. 15562 (daily ed. Sept. 30, 1971).

[66] Senator Vance Hartke (D-Ind.): "We must realize that President Nixon's position is not a passing fancy. For 17 years he has tried to get the United States to shore up the French colony in Vietnam or, failing that, to establish our own in South Vietnam." *Id.* at 15578.

[67] Senator Birch Bayh (D-Ind.): "There may be some Members of this body who know how to explain to their constituents why, in the name of the Vietnamese right of self-determination, we should continue to support a tyrant who is now destroying that right. I do not." *Id.* at 15568.

[68] Senator Fulbright: "Most of all—and in this respect the Pentagon papers have been most revealing—our policymakers have given short shrift to the human costs and consequences of the war both for the American people and the people of Indochina." *Id.* at 15575.

[69] Senator Pell (D-R.I.): "[I]t is tragically clear that this is a wrong war, fought in the wrong place at the wrong time, a war in which this Nation should never have become involved." *Id.* at 15576–77. A Harris Survey in 1971 reported that "58 percent [of those Americans polled in a representative survey] considered it morally wrong for the U.S. to be fighting in Vietnam." *War Debate*, 31 Facts on File 291 (1971).

[70] Senator Charles Percy (R-Ill.): "Mr. President, I will repeat, first—although I said this before—the Vietnam war is the worst single mistake the United States of America has ever made." *Id.* at 15564.

Senator Frank Moss (D-Utah): "The tragic war in Southeast Asia has been the most disastrous chapter in American history." *Id.* at 15573.

The validity of the foregoing arguments cannot be debated within the confines of this article. It is sufficient to note that many of the arguments have been accepted by a majority of Americans,[71] as well as by draft evaders and deserters.[72]

III. SUMMARY: CONSCRIPTION AND THE WAR

Strong arguments indicate that the draft is not congruent with the constitional concepts, that it is totalitarian, and that it is administered arbirtarily and unjustly. Equally persuasive arguments indicate that United States military involvement in Vietnam is illegal under international law, illegal under domestic law (because it is unconstitutional), and illegal under international rules of warfare. Furthermore, similarly potent arguments indicate that both the draft and the war are immoral for a civilized people.

IV. THE QUESTION OF AMNESTY

A. *The Rationale for Unconditional, Universal Amnesty*

With such an array of impressive arguments dictating against one's participation—particularly forced participation—in the war, it is not surprising that there are thousands of Americans in exile who refused to fight. Nor is it surprising that the question of amnesty for these exiles has been raised in public discussion.

The authority to grant amnesty is vested in both the President and Congress,[73] but virtually all amnesties in American history have been proclaimed by the President.[74] George Washington granted the first amnesty in 1795,[75] and twelve Presidents since that time have granted amnesties.[76] Thus, as President Nixon noted,[77] America has a tradition of granting amnesties following wars and insurrections. An amnesty for Vietnam draft evaders and deserters would be only a continuation of that tradition.[78] However, the case for amnesty for the Vietnam exiles rests on stronger ground than mere precedent.

First, draft evaders were forced to act on their conviction that the draft was wrong—a conviction, as we have seen, shared by the men who founded this nation. If the unjust infringement on personal liberty is ever justified, it certainly was not justified to provide cannon fodder for Vietnam. To punish an individual for refusing to obey an unjust law will only compound the cruelties caused by the war in Vietnam.

Second, the exiles also were forced to act on their convictions that the war was wrong. Most Americans—including public officials—did not have to "vote"

---

[71] A 1970 Harris poll revealed that Americans preferred terminating United States involvement in the war over declaring war by a 2 to 1 margin. L. Harris & Associates, The Harris Survey Yearbook of Public Opinion 1970 114 (1971) [hereinafter cited as Survey].

[72] The comments of this draft resister are typical: "[T]here we are in Vietnam—as in a few other places, supporting a totally corrupt government. A totally undemocratic government. We put it in power. And we're doing it to hold back the Communists. Because they're undemocratic. Because they're repressive. And how are we supporting this corrupt, repressive government? By burning human beings with napalm." F. Stevens, *supra* note 31, at 120–21.

[73] Presidential authority to grant amnesties and general pardons is derived from the Constitution. U.S. Const. art. II, § 2. Congress may also issue amnesties: "Although the Constitution vests in the President "power to grant reprieves and pardons for offenses against the United States . . ." this power has never been held to take from Congress the power to pass acts of general amnesty . . . . " Brown v. Walker, 161 U.S. 591, 601 (1896).

[74] In 1898, Congress passed an amnesty act which removed the final disabilities from former Confederate soldiers. 30 Stat. 432.

[75] A "full, free, and entire pardon to all persons" participating in the 1795 Whiskey Rebellion was granted on July 10, 1795. 1 J. Richardson, Compilation of the Messages and Papers of the Presidents 173 (1897).

[76] *Id.* 293–94 (Adams); *id.* 413 (Jefferson); 2 *id.* 497, 499, 528 (Madison); 3 *id.* 1062–63 (Jackson); 8 *id.* 3414–16, 3419 (Lincoln); *id.* 3508–10, 9 *id.* 3895 (A. Johnson); 10 *id.* 4189 (Grant); 15 *id.* 6690–92 (T. Roosevelt); 18 *id.* 8317–19 (Wilson). *See also* 43 Stat. 1940 (1924) (Coolidge); 48 Stat. 1725 (1933) (F. Roosevelt); 11 Fed. Reg. 14645 (1946), 12 Fed. Reg. 8731 (1947), 17 Fed. Reg. 11833 (1952) (Truman).

[77] Newsweek, Jan. 17, 1972, at 19. However, President Nixon has strongly indicated that he will not follow the acknowledged tradition. During the Presidential campaign of 1972, the President indicated that "he still opposed amnesty for U.S. military deserters." The President said, "Those who chose to desert must pay the penalty that they have earned." N.Y. Times, Sept. 24, 1972, at 47, col. 1.

[78] Many Americans apparently would like to break with tradition. A recent Gallup Poll indicated that 60 percent of the public were opposed to unconditional amnesty. N.Y. Times, Aug. 4, 1972, at 26, col. 6.

with their lives on the legality and morality of participation in the war.[79] The exiles, however, were forced to act on their opposition to the war—and they now face punishment if they return to the United States. Such punishment should either be meted out to all Americans who oppose the war, or to none.

Third, retaining sanctions against returning exiles constitutes an unjust selective enforcement of the draft law. It must be emphasized that "almost every kid in this country is either a draft evader, a potential draft evader, or a failed draft evader." [80] Most young men evade the draft without the fanfare accorded to those who go to Canada—they avoid it "legally." The number of ways to avoid the draft are legion,[81] and range from artificially inducing high blood pressure to hunting the American eagle in Colorado.[82] (It is a felony to hunt the American eagle, and convicted felons cannot be drafted.) Doctors find illnesses,[83] and lawyers find loopholes.[84] Thus, if the spirit of the Selective Service Law were to be enforced, few young men would be seen walking American streets. The essential difference between the draft evader in exile and the draft evader in America is one of honesty: the man in exile refused to fake a disability and he refused to become a minister solely to avoid the draft, while the man in America cut corners and managed, somehow, to evade the draft "legally." [85] In addition, large numbers of draft evaders and deserters are now being ignored by the government: the law itself is not equally enforced.[86] To penalize the exile while hundreds of thousands of others subverted the law or escaped punishment because of arbitrary enforcement, is to punish for his honesty, not his crime.

Fourth, the United States forced young men into exile by presenting them with an insoluble dilemma: either they violate the draft law or they violate their consciences, international law, and the rules of war.[87] The most logical, most humane, most conscionable course of action was to violate the Selective Service law.[88] That course of action, however, was the one to which a legal sanction certainly attached, whereas violations of conscience, international law and the rules of war were not likely to result in punishment. A situation in which an individual is

---

[79] It is particularly difficult to understand how a Senator could oppose the draft, oppose the war, and yet oppose amnesty, such as Senator Richard Schweiker (R-Pa.) and Senator John Tunney (D-Cal.). Letters from Senator Richard Schweiker and Senator John Tunney to William Wick, Jan. 27, 1972 and Jan. 19, 1972, on file in the editorial offices of the *Buffalo Law Review*.

[80] Comments of a draft evader in F. Stevens, *supra* note 31, at 229.

[81] Don't quit college whatever you do, or you'll lose your student deferment. Nurse along that trick ankle, make sure it's still bad enough to keep you out when you go for your physical. Keep your name down on the waiting list for the Guard, the Reserve. Find a job in a corporation doing defense work, have them pull strings to get you that occupational deferment. Study to become a minister—you don't actually have to BE one. Find a psychiatrist who will write the Golden Letter to your draft board saying you're unfit for service. *Id.* at 36.

[82] More extreme methods have been employed, however:

[E]very year at least a few desperate young men slice off one-half of either thumb. And in New York a nineteen-year-old shot himself in the right foot with his .22 caliber rifle, smashing several bones. He will limp for the rest of his life, but feels it is a reasonable price to pay for making sure he doesn't die fighting a war "that doesn't accomplish anything but shoot, burn, and starve Vietnamese peasants to death." *Id.* at 72–73.

[83] The young have mastered the art of beating the draft with medical or psychiatric excuses. Doctors do not invent diseases but look extra hard for disabilities that disqualify their patients. Letters are not always necessary. Many healthy registrants have skipped a doctor's help and still faked their way to 4–F or 1–Y status. Time, Nov. 16, 1970, at 67.

[84] Los Angeles attorney David Caplan stated: "Without doing anything illegal or extralegal, we are able to keep 99% of the people who walk in here out of the . . . draft. There are thousands of disqualifying physical and mental conditions, and it's a rare case that someone does not have *one* of them. . . ." Newsweek, Nov. 9, 1970, at 28.

[85] Individuals escaping the draft by cutting corners often respect those with the courage to be honest and go to Canada. "I thought of going to Canada like my brother, but I guess I'm just not . . . as principled as he is," said one person who evaded legally. F. Stevens, *supra* note 31, at 57.

[86] "Many deserters, perhaps a majority, are already being quietly discharged, mostly because many military commands are unwilling to go through complicated prosecution procedures." Time, Jan. 10, 1972, at 17.

[87] For some there is a third option, which has already been described: evading the draft "legally" in the United States.

[88] If Selective Service law is violated, only the individual suffers. If an individual goes to Vietnam, the chances are great that he will inflict injury and suffering on numerous other people.

forced by the state to choose between undesirable, illegal alternatives should not be tolerated in an advanced society.[89]

Fifth, many draft registrants were denied due process of law by the Selective Service System and consequently lost deferments as well as faith in the fairness of the System. To penalize exiles who were forced to leave because of unfair or illegal actions of their draft boards is to punish individual citizens for the failures of the Selective Service System.

Sixth, many exiles attempted to receive a Conscientious Objector classification, but failed because (1) the draft board did not grant many CO's or (2) the registrant, although passionately opposed to the Vietnam war, was not opposed to all wars. To punch these exiles is also to punish for the failures of the System—a system which functioned to so narrowly proscribe the requisites for a CO classification that it was an unrealistic and normally unobtainable option.

Seventh, it is ironic that this nation proposes to punish the returning exiles who helped alter public opinion and change the course of the war. Most exiles "saw the light first" and voiced their opposition to the war loudly and clearly. They voted for Lyndon Johnson, the peace candidate. Some voted for Richard Nixon, the peace candidate. They marched and rallied. They changed the course of the war, but not before they had to "vote" on it with their own lives. The individuals who first recognized the tragedy of Vietnam and tried to inform the public about it should be welcomed home.[90]

Eighth, the traditional reasons for granting amnesty were never more applicable than they are now. Vietnam has provoked and symbolized the discord and disunity of Americans during the past decade. The traditional purpose of amnesty is forgetfulness, to "bury the hatchet." [91] We may never fully recover from the agony, the horror, the tragedy of Vietnam. But we will insure that we will never recover if we continue to impose criminal sanctions on Vietnam exiles who wish to return to the United States.[92]

Finally, two distinct advantages would accompany the implementation of an amnesty for Vietnam exiles. First, some of the exiles may desire to return to the United States if they are free to do so.[93] There is an obvious advantage in attempting to salvage the drain on talent and spirit caused by the draft and the war, for both will be needed in abundance to begin anew after the war ends. In postwar America, we will especially need those who were perceptive and independent enough to question patriotic shibboleths, and those who were honest enough to go to Canada or someplace else in exile. Second, the people's lack of faith in their government and its institutions is probably the most significant problem confronting America today. An amnesty act would not singularly reverse this trend. However, it would be an effective step towards informing citizens that it is possible for the American government to be just; it is possible for the government to acknowledge mistakes. For many citizens, both possibilities are very much in doubt at the present time.

---

[89] As former Senator Ernest Gruening put it:

"By now our young people know that our nation was lied into this war. (Some of us knew it before the publication of the Pentagon papers.) Quite properly [they] object to being compelled to fight in a war in which no vital American interest is in jeopardy, to kill people against whom they feel no grievance, participate in what has become a mass slaughter of civilians, and maybe to get killed or maimed in the process. But if they refuse to go, if they follow their consciences, they face imprisonment at hard labor with all the disastrous consequences for their future.

"This is an infamous dilemma to which no citizen of a people that calls itself 'free' should be subject." 117 Cong. Rec. 14684 (daily ed. Sept. 21, 1971).

[90] Even more ironic is the fact that many exiles left the United States because they felt they could not remain *without* becoming revolutionaries. R. Williams, *supra* note 2, at 39.

[91] Knote v. United States, 10 Ct. Cl. 397, 407 (1874), *aff'd.* 95 U.S. 149 (1877).

[92] "[A]s these exiles drift back one by one over the years, are the divisions and animosities of the Vietnam era to be kept alive by repeated prosecutions and jailings for offenses long past?" Wicker, *supra* note 7.

[93] A number of reports have indicated that the exiles have no desire to return to the United States, *e.g.*, Newsweek, Jan. 17, 1972, at 25. However, there are undoubtedly thousands who would like to return to America, and thousands more who would like to visit periodically. Perhaps the typical view is articulated by the comments of this draft exile: "Ideally what I'd like to see is an amnesty. I feel we all deserve an amnesty. That wouldn't mean that I'd go back to the United States right away. I'd just like to have the right to travel across the border." R. Williams, *supra* note 2, at 195.

B. An Analysis of the Arguments Against Amnesty

Four principal objections have been raised against an amnesty for draft evaders and armed forces deserters:

(1) It is argued that if amnesty is proclaimed, the United States will no longer be able to field an army of draftees.[94] There are two responses to this argument. First, presumably those who cite this argument are concerned about the effects of amnesty on American armed forces. If so, the effect of an amnesty on draftees is of little consequence, because draftees have always constituted only a small percentage of the total armed forces active duty personnel.[95] Second, President Nixon has repeatedly stated his intention of establishing an all-volunteer army,[96] and while his commitment is in doubt, the viability of an all-volunteer army is not.[97] Thus, the quality and quantity of the United States armed forces will not be diminished by an amnesty.

(2) Opponents of amnesty also contend that the desertion rate would soar if amnesty were granted.[98] This argument is not persuasive either. First, the desertion rate has already "soared"—354,427 soldiers have been classified as deserters between 1967 and 1971.[99] Since the evidence indicates that the draft and the war are largely responsible for the high desertion rate, it is not reasonable to assume that an amnesty would result in higher rates of desertion.[100] Second, most active duty personnel are volunteers, and it is not likely that men whose chose to enter the armed forces will decide to desert even if they believe they can do so with impunity. Third, even among the draftees in the armed forces it is extremely unlikely that there are large numbers of soldiers who would vanish once word of amnesty is received; most likely, the vast majority of potential deserters have already deserted and are now in exile.

(3) "Can the government survive if individuals may selectively disobey the law with impunity?" is another issue raised by amnesty opponents. Presumably their answer is "no," and that is the substance of their objection.[101] In reality, of course, the answer is "yes." Thirteen Presidents have granted amnesties in the past. The government survived. If a fourteenth President implemented an amnesty, it would not result in the destruction of our nation. If used sparingly, amnesty is an effective instrument for tempering the law with equity and mercy. If amnesty were granted for a multitude of offenses, of course, its effect would be diluted and the survival of the government might become an issue. At the present time, however, it is ridiculous to assert that we are anywhere near that point. Historically, amnesty has not involved the issue of selective disobedience of the law. Amnesty has been granted not to condone selective disobedience, but to "forget" it.[102] Furthermore, since amnesties cannot be forecast, those who violate the law can never be certain that they will benefit from an amnesty.

---

[94] "I have always supported the draft, and I feel that outright amnesty would demoralize our system of drafting individuals for military service." Letter from Senator Ernest Hollings to William Wick, Feb. 7, 1972, on file in the editorial offices of the *Buffalo Law Review*.

[95] R. Stafford, F. Horton, R. Schweiker, G. Shriver & C. Whalen, How To End the Draft 125 (1967) [hereinafter cited as F. Horton].

[96] President Nixon pledged to end the draft in March, 1967, and again in the 1968 Presidential campaign, but during his first term in office he was one of the most influential forces against Congressional moves to abolish the draft. R. Williams, *supra* note 2, at 43. During the 1972 Presidential campaign, however, President Nixon again pledged to end the draft. N.Y. Times, Aug. 29, 1972, at 1, col. 8.

[97] F. Horton, *supra* note 95. *See also* The Report of the President's Commission on an All-Volunteer Armed Forces 5–6 (1970).

[98] Time, Jan. 10, 1972, at 17.

[99] Newsweek, Jan. 17, 1972, at 26.

[100] "[T]he desertion rate for the U.S. Armed Forces by 1967 had increased 300 per cent over the normal peacetime rate of the fifties and sixties." R. Williams, *supra* note 2, at 91.

Although among the deserters there were those who fled simply because they were frightened, the largest group of deserters in Canada are those "who simply object to war, to being forced in peacetime to fight wars and who, through a common intelligence, knew that the war in Vietnam was wrong." *Id.* at 114.

[101] "[W]e cannot acquiesce in a system which permits individual citizens to decide with impunity which laws they will obey and which they will destroy." Letter from Senator Gordon Allot (R-Colo.) to William Wick, Jan. 17, 1972, on file in the editorial offices of the *Buffalo Law Review*. "I fear the precedent for the future that Congress would set if we were to begin to permit individuals or groups to decide for themselves which laws they could obey, and which they could ignore or violate." Letter from Senator Richard Schweiker (R-Pa.) to William Wick, Jan. 27, 1972, on file in the editorial offices of the *Buffalo Law Review*. *See also* TIME, *supra* note 98.

[102] *Ex parte Law*, 35 Ga. 285, 296 (1866).

Although amnesty does not speak to the issue of selective disobedience of the law, opponents of amnesty have managed to bring the issue in through the back door by asserting that amnesty should not be granted because exiles left the country rather than accept punishment for their illegal resistance.[103] Consequently, the problem of selective disobedience should be examined.

Americans have been imbued with the notion that disobedience of laws which a person considers to be "bad" or "immoral" is wrong, because such disobedience presumably fosters a general disrespect for The Law—including, of course, "good" laws vital to the maintenance of our society. That notion does not withstand analysis, however. As one observer noted:

"But this is like arguing that children should be made to eat rotten fruit along with the good, lest they get the idea that *all* fruit should be thrown away. Isn't it likely that someone forced to eat the rotten fruit may because of that develop a distaste for all fruit?" [104]

Without developing the argument further, certainly we can posit that even the most conservative defender of the Rule of Law could visualize situations in which he would not obey the law. Otherwise, people would no longer be people—they would be amoral agents of the State, willing to do its bidding, whatever that may be. Conceding that some laws should not be obeyed, the defender of the "Rule of Law" would nevertheless argue that fleeing prosecution is not an available alternative: a person can attempt to change the law and, failing that, he must disobey it and accept the consequences.[105]

Attempting to change undesirable laws and policies is a reasonable initial approach, but its limitations are glaring when applied to the Vietnam exile situation. Individuals and groups have tried to change war policies, using a variety of means in their attempt to do so. The trend of the war began to change, but the war itself seemed endless. In fact, one could imagine the case of an eleven-year-old boy writing protest letters to his government in 1965, protesting against the war in other ways in later years, and being drafted and ordered to go to Vietnam in early 1972. That person tried to "change" governmental policies for seven years? Who could honestly tell him that he must not disobey the law, but try to change it.

Thus, if "change" is ineffective, it is asserted that a person may disobey the law, but that he must "accept the consequences." [106] But why? If a law is ruled unconstitutional, a person who breaks that law is not required to "accept the consequences." Despite evidence of their illegality, the draft and the American involvement in the war will apparently never be adjudged by the courts as illegal—but this society has done everything *but* formally stamp the draft and the war "illegal." The public considers the war a mistake.[107] Politicians have disowned the war: our only goal is to get out and to forget as quickly as possible about our participation and the rationalizations for our participation. If the courts have not declared the war illegal, our society has declared the war "wrong." Consequently, to argue that punishment is required to reinforce some general "Rule of Law" accomplishes only one thing: it appeases our "punitive puritan sense of bureaucratic duty." [108] Is the "Rule of Law" furthered when the state continues

---

[103] "Our system of representative democracy could not exist if we accepted selective obedience to laws, or did not enforce all our laws. We enjoy many benefits of a free society, including the privileges of influencing public policy through public debate. But we must also bear the burdens of a free society by obeying our laws and honoring all the collective restraints that enable each individual to be free. I fear the precedent for the future that Congress would set if we were to begin to permit individuals or groups to decide for themselves which laws they could obey, and which they could ignore or violate." Letter from Senator Richard Schweiker (R-Pa.) to William Wick, Jan. 27, 1972, on file in the editorial offices of the *Buffalo Law Review*.

[104] H. ZINN, DISOBEDIENCE AND DEMOCRACY 12 (1968).

[105] TIME, *supra* note 98.

[106] *Id.* Famous individuals such as Socrates, Ghandi, and Martin Luther King are often cited as having abided by this principle. In a number of ways, however, the Vietnam exile may face a problem of a different dimension. As one commentator observed: "Had Socrates been 18 when he was asked to choose between exile and hemlock both his reasoning and the outcome might have been different. Every American male is faced with his own version of hemlock in the guise of conscription." O'Rourke, *No More Parades*, NATION, May 24, 1971, at 662.

[107] A Gallup Poll in 1970 determined that a "majority of adults—56 percent—believe the United States made a mistake in sending troops to fight in Vietnam." N.Y. Times, June 28, 1970, at 4, col. 1.

In 1972, observations were made that "[W]e are approaching a consensus that it was a mistake from the beginning, that we should have never gotten into it [the Vietnam war]. . . ." NATION, Jan. 17, 1972, at 67–68.

[108] Widmer, *Where Our Writ Doesn't Run*, NATION, June 14, 1971, at 762.

to punish individuals for refusing to participate in a war that society has disowned as unjust and immoral? Is it furthered when an individual is punished because he refused to be jailed for his convictions about killing in Vietnam? Obviously not. Such actions can only serve to erode the "Rule of Law."

(4) The final, and most substantial, of the objections to amnesty is that an amnesty would not be fair to those who fought in Vietnam.[109] Since some men lost their lives in Vietnam, and since some were disabled, the contention is that it would be unfair to let draft evaders and deserters return without being punished.

The answer to this emotion-laden argument is two-fold. (1) "Yes," it is "unfair," but (2) that is not a relevant argument against amnesty.

Who could successfully argue that it would be "fair" to grant amnesty to a man who did not fight in Vietnam when his neighborhood counterpart was inducted, sent to Vietnam, and returned home in a casket? Or as a paraplegic?

However, can whatever happens to men who survived this tragedy be "fair"? To answer "yes" would pervert the meaning of the word. Can returning veterans, much less those who died, be treated "fairly" relative to the politicians who sent them to the war and to the public which approved? Clearly, the answer is "no." The simple fact is that *the men who have forfeited their lives and bodies in Vietnam cannot be compensated for their losses.* They were conditioned to obey the law and respect military and political leaders, accepting without question the laws and policies of the nation. Their leaders ordered them to fight "gooks" and die in Vietnam, and they dutifully went and fought and died in Vietnam. Their only mistake was a naivité about patriotism, war, the political situation in Indochina, and the foreign policy motivations of their country. For that mistake they paid dearly—and they paid without the traditional solace that they were fighting "for something", and not in vain. American soldiers fought for a corrupt dictatorship in South Vietnam and for a misguided executive in the United States. They fought and died for a dreadful mistake.

From this perspective, the irrelevance of the "fairness" argument to the issue of amnesty becomes clear. It is obviously absurd to deny an exile amnesty because he did not lose his legs in Vietnam. And it is equally absurd to attempt to artificially create "fairness" by requiring a period of forced national service before an exile may receive "amnesty."[110] Vietnam veterans cannot be compensated by denying freedom to Vietnam exiles. The government cannot provide arms, legs, eyes, resurrections, and a return to 1963; nor can it shift the blame for its mistakes onto the draft evaders and deserters by penalizing the exiles. All young men who suffered through the agony of Vietnam—those who went and those who refused to go—have been treated contemptuously by this government. To attempt to equalize the suffering by heaping more "unfairness" on those who refused to go is only a shallow, pitiful effort by the government to evade its own singular responsibility for Vietnam and its awful consequences.[111]

Conclusion

The question that must be faced by the American government and the American people is whether we have the right *"to prevent* them [the exiles] from returning when they have done nothing, in light of the Vietnam war, which can remotely be

---

[109] "How do you justify this legislation to the mother who will never see her son again; to the widow and children who won't have their father home again . . . . the only answer is that you cannot." Letter from Senator William Saxbe (R-Ohio) to William Wick, Jan. 28, 1972, on file in the editorial offices of the *Buffalo Law Review.*

[110] The bills introduced by Senator Taft and Representative Koch require a period of forced service. The bill introduced by Representative Abzug does not require any such alternate service. *Supra,* note 8. Many Senators share the views of Senator Edward Gurney (R-Fla.): "I would consider supporting an amnesty proposal with certain conditions, and I feel these conditions should be relatively harsh. I am not in sympathy with those who have left the country to avoid military service, and I think it would betray those who did not want to go to Vietnam but who did go because they felt it was their duty to their country." Letter from Senator Edward Gurney to William Wick, Jan. 21, 1972, on file in the editorial offices of the *Buffalo Law Review.*

If "harsh" conditions are imposed on those seeking "amnesty," however, it would not be an amnesty at all, but simply an alteration of the penalties for breaking the law.

[111] The fact is, of course, that the exiles have suffered through much already. Establishing a new life in exile and fearing to return home create great emotional strains. The men who have been forced into exile have already performed their "national service."

called a crime." [112] There is not doubt in this writer's mind that draft evaders and deserters will eventually be regarded as heroes. An amnesty cannot minimize the tragedy that has already occurred, but it will insure that the mistakes of the war are not compounded in the war's aftermath. Hopefully, history books published decades from now will indicate that the heroes of the Vietnam war were able to return home, honorably, in 1973—without fear of prosecution.

WILLIAM D. WICK.*

MARCH 1, 1974.

CROSS PLAINS, WIS., *February 22, 1974.*

Hon. ROBERT W. KASTENMEIER,
House Judiciary Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: In anticipation of your Congressional hearings on amnesty, I would like to bring to your attention the following case history of a second district constituent. In 17 years of teaching in Madison I have seldom had a student in class with as much potential for contributing to American society as the young man I am about to describe to you. The loss of this potential to another country because of the short-sightedness of the present administration on the question of amnesty prompts this letter of protest.

I first knew Charles Jacobsen when he was a star quarterback at Wisconsin High School in Madison. He was elected student council president in his senior year by fellow students, and he assumed an active role in the festivities which marked the closing of that school after 53 years of affiliation with the University of Wisconsin. He then enrolled at the University of Wisconsin—Madison, and in 1968 completed a B.A. degre in philosophy. During his college career he worked part-time at various jobs in Madison while at the same time making a substantial contribution with others to a program of recreation for culturally deprived and minority students from Madison's south side. This experience no doubt contributed to his decision to join the Peace Corps that summer.

Chuck was assigned to teach mathematics to junior high age youngsters at Kenema in Sierra Leone. After two years of distinguished service he returned to Madison to find a draft notice awaiting his attention. After some discussion of filing as a conscientious objector, and considerable private debate over the "right thing to do" he finally decided to immigrate to Sweden. Shortly after his arrival in Sweden his mother died after many years of an agonizing battle with cancer. Of course Chuck was prohibited from re-entering the United States for his mother's funeral by the circumstances of his departure.

The traumatic experience of young men such as Chuck Jacobsen who have exhibited their youthful idealism in their own land, and then found themselves forceably exiled by what they see as a travesty on the American ideal, can only be understood by the young men themselves. It is nevertheless the responsibility of government to learn as much as it can of the reality of this experience before they make decisions that will affect not only the young men but the nation at large.

Chuck has just recently married a Finnish girl and they live as a family on a farm near Orsundbro, Sweden. While living in Sweden Chuck has continued his graduate studies at Uppsala, worked as a fisherman and as a tile maker in a local factory. He has worked hard to acclimate himself to life as a Swedish citizen which will no doubt be the next step.

So we have lost him—one of America's finest. A young man with a life time of potential—instilled with the kind of idealism that has made this country great—

---

[112] R. Williams, *supra* note 2, at 401. The amnesty proposed in this article would not absolve individuals of crimes other than refusing induction or deserting, but *all* draft evaders and deserters automatically would receive amnesty for illegal evasion and desertion. The establishment of tribunals to assess motives and evaluate individual cases would re-open national wounds instead of binding them, particularly since it was the war which influenced such a vast majority of exiles to avoid serving. See *supra* note 100.

*Mr. Wick is a second year student at the Georgetown University Law Center, Washington, D.C.

a man whose idealism has been irreparably soured by the attitude of the administration on the issue of Vietnam—a man who made his contribution by serving for two years with distinction in the Peace Corps, and then was kicked in the teeth by an insensitive bureaucracy which failed to distinguish between blind subservience and intelligent questioning of a policy that history has already proven fallacious. If there are any heroes of Vietnam they are found as much in Toronto and Stockholm as at the military ceremonies in Washington.

This is the case history of only one young American. There must be many others—men who believed in American democracy—men who joined the Peace Corps or Vista, or who made their contribution in countless other positive, hopeful ways—men who are now exiled for making a decision that other men must at least respect even if they don't agree. These are the men you should give some attention to in your hearings. These are not the drop-outs of society. They are instead doing for Sweden or Canada what they might be doing for us if we let them.

Sincerely,

JOHN L. EVERARD.

THE UNIVERSITY OF MICHIGAN LAW SCHOOL,
Ann Arbor, Mich., February 25, 1974.

Representative ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: I am submitting this letter for inclusion in the printed record of your forthcoming hearings on amnesty on March 7 and 8, 1974.

As a professor of law, and one who believes that respect for law is a fundamental necessity in any civilized society, I nonetheless urge your support for an unconditional amnesty for those who refused to participate in the war in Vietnam, either by refusal to be conscripted or by desertion from the Armed Forces.

One observation that soon becomes obvious to anyone whose profession is the law is that respect for law does not depend upon the mechanical and mindless enforcement of every law on the books, regardless of circumstances or regardless of the content of the law. The law is not, as we have been so often reminded, a brooding omnipresence. It is an instrument of the society, designed to achieve the community's purposes, and thus must always be enforced with those purposes in mind.

Each of us knows of situations where, technically, the law has been violated, but where every element of human compassion and common sense dictates that it should not be applied in its full rigor. Hardly a week goes by that we do not read in the newspapers of a situation where a local prosecutor has decided not to prosecute out of compassionate considerations. Indeed, the very existence in the law of the power of pardon and amnesty illustrate the need for such temperance.

In our own history, we have the dramatic example of those who during the pre-emancipation period took it upon themselves to help runaway slaves. While this was clearly illegal, who today would argue that it was not the plain course of justice, and that the law should not have been used to prosecute these humanitarians who were willing to act on the principle that slaves were human beings and not mere chattels? Indeed, at that time, local communities strongly opposed and prevented prosecutions of those who helped runaway slaves. I have described some of these instances in an article I wrote in the June, 1968 issue of the Yale Review, Volume LVII, at pages 482 and 483.

As a college teacher, I had a good deal of experience talking with young men who were called to serve in the Vietnam War, and I am acutely aware of the terrible moral anguish many of them faced. They felt a powerful pressure to fulfill their legal obligations, and at the same time a powerful moral repugnance at much of which they were learning about what was occurring in Vietnam. At that time, many of us were skeptical of some of the asserted outrages that enflamed their consciences. In subsequent months and years we have learned, unfortunately, that all too many of those concerns were justified. Even this week, we read in the paper of the possibility that the effects of the defoliation program may endure for as long as 100 years, to the cost of future generations of innocent Vietnamese.

Even today, there is in America a wide range of opinion about the Vietnam War. But it hardly seems possible to me for any of us to feel that those who were unwilling to serve do not deserve the compassionate understanding of the community. That compassion ought not to be, at this stage, cribbed and confined by various conditions. The time has come to put the rancor of these years of the War aside, and let all Americans return to their homes, their jobs and their families as full citizens.

Amnesty, of course, is not new to America. It has been an element of American policy time and again following most of our wars. However one may read the history of previous amnesties, and they differed greatly (as I described in my testimony before Senator Kennedy's Subcommittee of the Senate Judiciary Committee on March 1, 1972), there is certainly nothing in our history that could be described as a precedent against amnesty.

Yours,

JOSEPH L. SAX,
Professor of Law.

AMERICAN CIVIL LIBERTIES UNION,
New York, N.Y., February 21, 1974.

Hon. ROBERT W. KASTENMEIER,
Rayburn House Office Building,
Washington, D.C.

SIR: Your hearings on amnesty for violators of military requirements of men drafted or of draft age prompt me to add my view that only a general and unconditional annulment will serve the practical ends of justice.

I have had considerable experience with this issue as head of amnesty campaigns after both World War I and II. Those campaigns urged general amnesties but had to settle for individual reviews and pardons. This policy resulted in so many injustices, due to varying standards of the reviewing officials, that even its advocates conceded its unfairness.

I do not think it either fair nor practical to try again the individual reviewing system nor to assess who among conscientious objectors should do penance for their defections. Categories presumably will be established to deal with the various groups that must be specified in an amnesty, but no penalties should attach to them, primarily because of their impracticality from the government's side and unfairness from the men's side.

I have hesitated to endorse the abolition of less than honorable discharges from the army because it is obvious they fit certain classes of men. But I have concluded that the system is so shot through with prejudice and favoritism, and is so irresponsibly administered that there should be only one discharge without characterization. Discharges after court martial are of course quite by themselves.

If a general amnesty after previous wars was not granted, the argument for one after the Vietnam war is far more persuasive. It was an undeclared war, opposed by a large sector of the public; it was unjustified intervention in a civil war unrelated to U.S. national interests. However one regards it, the men who opposed it deserve recognition of their views and conduct, shared by so many, probably a majority, of their countrymen.

Sincerely yours,

ROGER BALDWIN.

TORONTO, ONTARIO, *February 10, 1974.*

Representative ROBERT KASTENMEIER,
House of Representatives
Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: In light of the fact that I am unable to be present to testify at the amnesty hearings that the House Judiciary Committee subcommittee, which you chair, is holding since I am an Army deserter, I would like to submit the following statement to be included in the Hearing Record:

The argument is often made that the only amnesty that can be just to all individuals concerned is one which proceeds on a case-by-case basis. This argument is usually based upon the record of the 1947 Truman Amnesty Board which,

after a case-by-case consideration, recommended to President Truman that he amnesty only 1,523 out of a total of 15,805 cases being reviewed for amnesty. The Board's recommendation made the following point:

In perhaps one half of the cases considered, the files reflected a prior record of one or more *serious criminal offenses*. The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases . . .

Many of the wilful violators were men with criminal records; many whose record included murder, rape, burglary, larceny, robbery, larceny of Government property, fraudulent enlistment, conspiracy to rob, arson, violations of the immigration laws, counterfeiting, desertion from the U.S. Armed Forces, embezzlement, breaking and entering, bigamy, drinking benzedrine to deceive medical examiners, felonious assault, violations of National Motor Vehicle Theft Act, extortion, blackmail, impersonalization, insurance frauds, bribery, black market operations and other offenses of equally serious nature; men who were seeking to escape detection for crimes committed; fugitives from justice; wife deserters, and others who had ulterior motives for escaping the draft . . . (Emphasis added.)

Those who make the case today for individual adjudication of war resisters argue that an examination of Vietnam era war resisters would show similar figures. However, before we go on to establish guidelines for future conduct based on historical precedents, let us first be certain that we have a correct understanding of our historical example.

The Amnesty Board did not give a breakdown of the above lists of serious criminal offenses in its Report to the President. Consequently, in April 1948 Charles P. Taft, the President of the Federal Council of Churches of Christ in America, wrote to President Truman concerning this matter. Taft was highly critical of the limited amnesty recommended by the Board. He requested that the category of 10,000 wilful violators be broken down according to the type of offense because the report had cultivated the impression that the vast majority of men in this category were murderers and rapists.

Taft had found the jugular vein of the Truman Administration's amnesty policy. In order to justify the exclusion of 10,000 or 63 percent of those considered for amnesty, the Board needed to be standing on firm ground; it was not. Truman, to whom the letter was addressed, declined to answer Taft personally. William D. Hassett, Secretary to the President, in re-routing the letter to Attorney General Tom C. Clark explained that Clark should answer it to take "the heat off the President personally." Clark offered the following table for the 10,000 wilful draft refusers, offenses broken down by categories. It was compiled by the Justice Department on 30 June 1946.

Type of Violation:	
Failure to Register	1,434
False Registration	224
Failure to Possess Registration Certificate	185
Failure to Return Questionnaire	2,717
False Questionnaire	637
Failure to Possess Classification Notice	70
Failure to Report for Physical Examination	1,611
Failure to Report for Induction	2,444
Counseling or Aiding Evasion	169
Interference by Force	38
Bribery and Offense by Officials	42
Miscellaneous	101
Total	9,672

Clark knew he did not have a leg to stand on. He did not even attempt to justify their exclusion on the basis of the "serious criminal offenses" phrase the Board's report had used as a blanket category, since it is clear that only 139 (Interference by Force and Miscellaneous) of the nearly 10,000 could even be construed to be anything more serious than Selective Service violations. (This information was taken from the "Amnesty Collection" of the Harry S. Truman Library, Independence, Missouri.)

Unfortunately this actual break down of offenses never became public knowledge. Attempts were made by the amnesty movement to continue pressing for a full amnesty for World War II war resisters, but the amensty proclaimed by President Truman in December 1947 was successful in dividing the amnesty movement and dissipating the public campaign for amnesty. The Truman Administration amnesty policy was not the first in the American amnesty tradition to use case-by-case amnesty to avoid granting a real amnesty.

After the First World War there was a strong public outcry for amnesty for violators of the war's Selective Service Act and the Sedition and Espionage Acts. President Woodrow Wilson favored an amnesty but was persuaded otherwise by his Attorney Generals Thomas Gregory and A. Mitchell Palmer. President Warren Harding saw these political prisoners as dangerous and was opposed to a general amnesty. Although Gregory and Palmer were opposed to a general amnesty, they did recommend a case-by-case review of some wartime sentences under the Espionage Act. This resulted in a few reduced sentences and commutations but did not even consider IWW members, who comprised the bulk of those sentenced under the Act. Since the legitimacy of these wartime convictions was subject to doubt even within the Government, the case-by-case review was never considered as a legitimate amnesty but rather as a device to reduce public pressure for amnesty.

The Justice Department later admitted confidentially that "the testimony is meager with regard to many of the defendants, the government is relying largely upon the general atmosphere surrounding the prosecution and the fact that the defendants were IWW, rather than upon direct, positive testimony . . . [and] the conviction is sometimes based largely upon conjecture . . ." The Pardon Attorney found that in many instances there was no evidence whatever to show that the defendants had done anything to violate the Selective Service Act or the Espionage Act. (William Preston, Jr., *Aliens and Dissenters: Federal Supression of Radicals, 1903–1933,* (Harvard University Press, 1963), pp. 249–50.)

The Harding Administration used a policy of selective commutations during 1921 based upon immediate deportation of foreign born prisoners. When the amnesty movement seemed to be gaining momentum in 1921, Harding ordered the release of his most notorious prisoner, Eugene Debs. Attorney General Daugherty explained.

That Debs' "release . . . [was] brought about because the movement had succeeded or gone too far." The policy paid off, for immediately thereafter, one of the major forces behind the amnesty drive called off its campaign. The American Federation of Labor ceased its operations on behalf of political prisoners because it believed "a full measure of success had been achieved." (William Preston, Jr., *Aliens and Dissenters,* p. 259.)

In these ways Harding managed to avoid granting a general amnesty.

Calvin Coolidge granted unconditional commutation for 30 IWW members in 1923 and pardoned another four aliens in 1925. Approximately 1,500 political prisoners and conscientious objectors languished in jail, however, until President Franklin D. Roosevelt reversed this policy in 1933 with a general amnesty.

These lessons were not lost upon Harry Truman. Before he resorted to creating an Amnesty Board to review each case individually, the Administration tried to obviate the need for amnesty by implementing a new liberal parole policy in 1945–46. Parole was not the same as amnesty, as the former did not restore an individual's civil rights. (A Selective Service violation is a federal felony and such a conviction results in the loss of such rights as voting in some states, belonging to professional associations such as legal, teaching, medical groups, as well as being unable to run for public office.)

Yet Truman's Attorney General Tom Clark did not seem concerned about the distinction between the two legal devices—amnesty and parole. His main concern was to get the draft resisters and COs out of prison and simultaneously to reduce public support for amnesty. As Clark put it:

As I see it, the granting of unconditional paroles to all sincere conscientious objectors and Jehovah's Witnesses who have served eighteen months will make unnecessary any Executive clemency [amnesty] to procure such releases. (Attorney General Tom C. Clark letter to Owen J. Roberts, 20 September 1946, Box 1, Owen J. Roberts correspondence folder, Committee for Amnesty Papers, Swarthmore College Peace Collection, Swarthmore, Pa.)

Clark was mistaken. His parole policy did not reduce the number of men in prison quickly enough.

The forces working for a general amnesty were building up outside while the number of men behind bars remained high as a great number of COs refused parole because it left them stripped of their civil rights and gave validity to their original convictions for refusing the draft. Truman, therefore, was forced to go through the motions of declaring amnesty, but for a mere 1,523 out of a total of 15,805 cases. As shown above with respect to the class of approximately 10,000 wilful violators—"the serious criminals"—the official justification for such a limited amnesty was bankrupt.

Is it any wonder that organizations such as the American Legion, the Pentagon, and the Selective Service System are in favor of a case-by-case review? They know that individual review will be the next best thing to no amnesty at all. More importantly, they know that it is possible to cover up injustice in a blanket of official deceit and thereby stall public campaigns for amnesty. The Government has had a great deal of success in implementing this tactic not only after World Wars I and II, but it has also been quite active in cover-up operations with respect to the Indochina War and Watergate related issues. The question of amnesty must not be covered-up.

Thanking you for your cooperation, I am,

Sincerely,

JACK COLHOUN.

PERRY & FIRST, ATTORNEYS AT LAW,
Milwaukee, Wis., February 18, 1974.

MR. WILLIAM DIXON,
Counsel, Subcommittee on Courts, Civil Liberties and Administration of Justice of the House Committee on Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR MR. DIXON: I have enclosed a letter that was published in the Milwaukee Journal and would like this statement to be included in the record containing the subcommittee's report on amnesty.

It is not so much hoped that this letter will become a part of the record as the message and, accordingly, I would hope this aspect of amnesty is given careful attention.

Sincerely,

CURRY FIRST.

AMNESTY NOT AN ISSUE

To The Journal: Your Jan. 9 editorial, "Amnesty Must Be Faced," quoted Melvin Laird as stating amnesty should be considered and that justice must be administered with compassion and mercy.

When the amnesty issue is discussed in the context of compassion and mercy, it is clear those individuals have in mind a type of forgiveness for those who illegally evaded their military obligation. This belief is underscored by a conditional type of amnesty under which the individuals may be required to undertake compulsory national service for this country.

This entire approach, despite your editorial headline, does not face the real issue. We should be concerned with justice and not mercy. In considering justice we must confront openly the condition precedent, which is whether this country's participation in Southeast Asia constituted war crimes.

Recognizing world opinion, including that of many of our allies, and legal experts in this country, we must accept the fact this country's most unpopular war was also illegal under international law. For example, we can all remember too well that it was just 13 months ago that we brought Christmas to Hanoi in the form of genocidal bombing, the most concentrated in the history of air warfare.

Thus, those who avoided military service and payment of war taxes followed the just course and for them amnesty or forgiveness should not be at issue. Rather, we should administer justice, coupled with compassion and mercy, to those war criminals, whoever they be, who devastated Southeast Asia and its peoples.

CURRY FIRST.

AMNESTY INTERNATIONAL, INTERNATIONAL SECRETARIAT,
London, 19th February, 1974.

Hon. ROBERT W. KASTENMEIR,

Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIR, I understand that the Committee on the Judiciary of the U.S. House of Representatives is to hold legislative hearings on the issue of amnesty for American War Resisters on March 7th and 8th.

On 22nd July, 1973 Amnesty International issued a statement of support for "the campaign currently being waged in the United States for a general unconditional amnesty for all war resisters". I have pleasure in enclosing a copy of that statement and respectfully request that it be included in the record of the hearing.

Now that the direct involvement in the IndoChina conflict of uniformed United States military personnel has ended it seems particularly urgent that the wound caused by that war, especially among American youth, be healed. The provision by Congress for a universal, unconditional amnesty, (that is, total exoneration), would be an indispensable component of the healing process.

Yours sincerely,

MARTIN ENNALS, *Secretary General.*

STATEMENT ON AMNESTY FOR U.S. WAR RESISTERS

Amnesty International supports the campaign currently being waged in the United States for a general, unconditional amnesty of all war resisters. Amnesty International is a non-governmental organization dedicated to the release of prisoners, who, not having advocated or used violence, are imprisoned by reason of their political, religious or other conscientiously held beliefs, or by reason of their ethnic origin, colour or language.

The majority of Amnesty's adopted prisoners in the United States have, in the past several years, been young men convicted of refusal to serve in the armed forces on the grounds of opposition to the war in Indochina.

Accordingly, Amnesty International calls particularly for the release and exoneration of those who have been convicted for refusal to serve in the armed forces and for the non-prosecution and non-arraignment of those who have not yet been tried for such refusal.

This statement of support for the general amnesty campaign is also intended to cover all people, e.g. deserters, civil disobedients, people receiving less-than-honourable discharges etc, who, for having opposed the conduct of the war on grounds of conscience, are the subjects of the campaign in the United States.

Amnesty International's policy on conscientious objection is based on the declaration of the World Conference on Religion and Peace, held in Kyoto, Japan, October 16–21, 1970. The Kyoto declaration states:

"We consider that the exercise of conscientious judgment is inherent in the dignity of human beings and that, accordingly, each person should be assured the right, on grounds of conscience or profound conviction, to refuse military service, or any other direct or indirect participation in wars or armed conflicts. The right of conscientious objection also extends to those who are unwilling to serve in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which weapons of mass destruction are likely to be used. This Conference also considers that members of armed forces have the right, and even the duty, to refuse to obey military orders which may involve the commission of criminal offences, or of war crimes, or of crimes against humanity."

Amnesty International, as early as November 1969, issued a Declaration of Concern and Appeal for Amnesty. This Declaration appealed "to the American Government to keep faith with its tradition of freedom of dissent by declaring an amnesty for all those imprisoned, awaiting trial, or in exile because of their refusal, on grounds of principle, to participate in the Vietnam war." It accurately predicted that the "indicted draft resisters and some of the deserters in exile form a reservoir of potential prisoners of conscience who may populate the goals of America long after there is no Vietnam war unless some form of amnesty is granted."

LEHIGH-POCONO COMMITTEE OF CONCERN,
Bethlehem, Pa., February 27, 1974.

Hon. ROBERT W. KASTENMEIER,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: We submit the following letter and the enclosed resolution for inclusion in the report of the amnesty hearings to be held by the Subcommittee on Courts, Civil Liberties and the Administration of Justice.

The free world has recently been shocked by the deportation of A. Solzhenitsyn. Much as we sympathize with him, abhor the repressive treatment Russia hands out to its free thinkers and rejoice in the rising wave of world opinion that may have some effect on the internal policies of Russia, we cannot help remembering that there are at least 75,000 American exiles in countries throughout the world who cannot return home without the threat of prison. Wherever they are, they are daily reminders of the United States government's vindictive oppression of those who would not kill at the command of the state. These words are none too harsh to describe the arrest of one such resister at his father's funeral.

We also remember the several hundred objectors still in prison because they would not participate in a war that has been labeled even by high political figures as a "tragic mistake" and that supposedly ended in "peace with honor" over a year ago. We remember the hundreds with criminal records because they followed the dictates of their consciences.

Nor can we forget the hundreds of thousands of veterans who were made permanent second-class citizens when given less-than-honorable discharges because they woke up to the insanity and horror of American activities in Southeast Asia, refused to be a part of it any longer, escaped through drugs or, becoming temporarily unbalanced, committed some crazy act. If given the choice, they might even prefer a 5-year stretch in Siberia to the life-time of discrimination that they face in America.

Until universal and unconditional amnesty is granted to these victims of a regrettable error in military policy, the United States cannot hope to "bind up the wounds of war", can only point a hypocritical finger at political repression in other countries, and as self-acclaimed leader of the "free" world, can only hang its head in shame.

Sincerely,

ANNA M. HUNT, *Coordinator.*

RESOLUTION OF LEPOCO (LEHIGH-POCONO COMMITTEE OF CONCERN) TO PETITION THE PRESIDENT AND CONGRESS OF THE UNITED STATES TO GRANT TOTAL AND UNCONDITIONAL AMNESTY

Whereas conscription has always been contrary to the basic ideals of America, and involuntary servitude is specifically forbidden by the 13th amendment to the Constitution of the United States; and

Whereas many Americans have opposed the undeclared war of aggression in Southeast Asia conducted by the commander-in-chief of the United States military forces without proper authorization by the Congress; and

Whereas the conduct of this war has sometimes been in violation of international law binding on the United States of America, and responsibility for conduct has been placed upon individuals as well as governments by the Nuremburg Principles; and

Whereas the cease-fire agreements signed in Paris stress the spirit of reconciliation among all dissident parties in the recent conflict, and President Nixon has offered cooperation and aid to the North Vietnamese; and

Whereas President Nixon has often proclaimed his goal of healing the wounds of war and dissent within our own country, but contrary to the spirit of reconciliation, insists upon punishment for those Americans who resisted the draft or refused to participate in this war; and

Whereas Australia has already demonstrated the way of compassion and desire for peace by abolishing the draft, cancelling all legal procedures against resisters and has released from prison all those previously sentenced;

Be It *Resolved* that LEPOCO (Lehigh-Pocono Committee of Concern) hereby petitions the President and Congress of the United States to:

(1) grant immediate universal and unconditional amnesty,
(2) remove any threat of punitive action,
(3) clear all criminal records, and

(4) restore full citizenship rights to all those civilians and members of the military threatened with or under indictment, sentenced, holding less than honorable discharges, in prison, in hiding or in exile because of their resistance or opposition to the draft and/or to the war.

Drafted: March 11, 1973, Passed: March 13, 1973.

UNION OF AMERICAN HEBREW CONGREGATIONS,
RELIGIOUS ACTION CENTER,
Washington, D.C., February 25, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, Washington, D.C.

DEAR MR. CHAIRMAN: At our Biennial Convention held in New York City last November, the Union of American Hebrew Congregations adopted the attached resolution supporting unconditional amnesty. The Union of American Hebrew Congregations represents more than 700 Reform synagogues throughout the United States, with a combined membership of approximately one million persons.

We are pleased that your subcommittee will be holding hearings on this subject soon, and would appreciate your including this letter and the attached resolution in the record of the hearings.

We urge that your subcommittee report out legislation granting unconditional amnesty to the young men who found that they could not participate in the Vietnam war and so went to prison, resisted or deserted.

Thank you for your courtesy.

Sincerely yours,

ALBERT VORSPAN.

UNION OF AMERICAN HEBREW CONGREGATIONS

AMNESTY

We are deeply gratified by the ceasefire accord presently in force in Vietnam. It has brought cessation to a war we have long opposed and for which we saw neither moral nor legal sanction.

We express our most reverent hope that this ceasefire will ripen into an abiding and lasting peace, and that it will provide the needed opportunity to reconcile the deep domestic divisions which so embitter our society. It is time now to "bind up the wounds of the nation."

Based on the Jewish religious concern to reconcile generation to generation, person to person and in consonance with the prophetic cry of Malachi: to turn the hearts of the parents to the children and the hearts of the children to the parents, it is our considered judgment that the first way to affect this healing process is by Congress granting unconditional amnesty to those young men who found, early or late, that they could not participate in that war and so went to prison, resisted or deserted. As we make peace with our enemies, let us also make peace with these, our youth.

With full respect for those who chose to serve and those who sacrificed so much for their country, we call upon Congress to grant unconditional amnesty as an act of reconciliation and compassion that can help speedily to reunite the American people for the key task of justice and peace which lie ahead.

STAMFORD-GREENWICH MONTHLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS

STAMFORD, CONN.

WILLIAM DIXON, Esq.,
Counsel, Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DIXON: I am enclosing a statement approved by our Meeting at its Meeting for Business held on Sunday February 17, 1974, in support of unconditional amnesty for all civilian and military war objectors.

Sincerely,

CARL J. HOLLANDER, *Clerk.*

STATEMENT

We feel a deep concern for all those whose lives have been directly affected by the war in southeast Asia. Especially we are concerned for the young American who faced major decisions affecting his future, often with little or no guidance. The conflicts that afflicted American society over the war in Vietnam, Cambodia and Laos, also were deeply suffered by the men who were called upon to enter the military and carry out acts of aggression against human beings who had neither threatened or attacked the United States. The moral problems posed excruciating choices to young men. We feel compassion for all of them, those who accepted conscription with the anguish, disillusion and psychological injury so many bore, or who suffered physical impairment, or who were killed, and those men whose conscience was aroused and who resisted the draft or military by refusing to engage in what they believed were immoral acts.

We reaffirm the testimony against outward war and strife enunciated by George Fox over 300 years ago, putting the duty of conscience above temporal duty. We ask for legislation providing full and unconditional amnesty for all who face or have suffered penalties for resisting the draft or military: 1) permitting the return of all those outside the U.S.; 2) providing the prompt release of all men currently held in civilian or military prisons; 3) dropping pending or potential prosecutions; 4) restoring full civil rights and honorable discharges for all who have lost such rights.

To single out any group of citizens for special punishment when all have borne the trials imposed by circumstance seems to us to be unjust. We believe that peace and justice for all men requires understanding. We urge you to extend our country's tradition of granting amnesty. A congressional act granting unconditional amnesty now would be a positive and welcome move toward reconciliation with all of our citizens.

FEBRUARY 18, 1974.

WILLIAM DIXON, Esq.,
House Committee on the Judiciary,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DIXON: We ask that the following formal statement be included in the record for the House Judiciary Committee amnesty hearings on March 7 and 8.

Sincerely,

COALITION OF AMERICAN WAR RESISTERS IN CANADA

By: BUFF PARRY.

(For: Regina Committee to Assist War Objectors, Toronto Anti-Draft Programme, Ottawa Aid Committee, Winnipeg Committee to Assist War Objectors, Amex-Canada, Calgary Committee on War Immigrants, Vancouver American Exiles Association, Vancouver Committee to Aid American War Objectors, Halifax Committee to Aid American War Resisters.)

FORMAL STATEMENT OF THE COALITION OF AMERICAN WAR RESISTERS IN CANADA FOR THE HOUSE JUDICIARY COMMITTEE HEARINGS ON AMNESTY TO BE HELD MARCH 7 & 8, 1974

With the oddest assortment of people stepping aboard the amnesty conscience-clearing crusade, we, of the Coalition of American War Resisters in Canada, wish to emphasize our position on the subject of amnesty. As we stated in our unity statement of U.S. War Resisters on Amnesty, adopted by all present at our Vancouver, B.C. Dec. 13, 1973 meeting, we are firm in our conviction that,

As people who have been opposed to the United States government's war in Indochina and face prosecution or other loss of rights because of our opposition, we demand universal, unconditional amnesty. This does not mean forgiveness or forgetfulness for our acts of resistance, of which we are proud. Nor does it mean that we are begging permission to "return to the fold." We are calling on the American people to demand with us that the U.S. government stop any efforts to prosecute us or deny our rights because of our just acts of resistance.

Among those who are arguing for conditional amnesty are Melvin Laird and former Secretary of the Army, Robert F. Froehlke. The San Francisco Chronicle published an editorial January 25, 1974 concerning Froehlke's and Laird's position on amnesty, with the following included.

Both urge congress to act before the 1976 elections and to attack the task without vindictiveness. . . . 'We should to the best of our ability forgive and forget', says Froehlke.

The editorial, after insinuating that the Laird-Froehlke stand is daring, concludes with "The time is clearly at hand to tackle it" with "it" being the "grave question" of amnesty.

On the "grave question" of war, Froehlke had this to say before the Town Hall assembly in Los Angeles, California, January 22, 1974, in an address concerning conditional amnesty for a select 4,500 exiles,

If there will always be war, then shouldn't we have an army to fight those wars? The campus people, in their idealism, will not buy the belief that wars are inevitable.

Nor will the Coalition of American War Resistors in Canada "*buy*" the belief that wars are inevitable. We hereby disassociate ourselves totally from the Laird-Froehlke position on amnesty and reemphasize that our definition of "amnesty" is in no way the definition the conscience-clearers are raising. Ours is closer to linguist Noam Chomsky's which was stated in personal correspondence, . . . one gives amnesty for crimes, not for the performance of one's duty as a human being.

Always remembering,

COALITION OF AMERICAN WAR RESISTERS IN CANADA,
By: BUFF PARRY.

(For: Toronto Anti-Draft Programme (Danny Zimmerman), Ottawa Aid Committee (Don Pease), Winnipeg Committee to Assist War Objectors (Tim Maloney), Regina Committee to Assist War Objectors (Buff Parry), Amex-Canada (Jack Colhoun), Calgary Committee on War Immigrants (Mike Johnson), Vancouver American Exiles Association (Darryl Adams), Vancouver Committee to Aid American War Objectors (Larry Martin), Halifax Committee to Aid American War Resisters (Eric Stine).)

OAKVILLE, ONTARIO, CANADA, *March 2, 1974.*

DEAR REPRESENTATIVE KASTENMEIER: It is my understanding that hearings will be staged on the question of amnesty. I hope these documents reach you in time.

I hope that I can serve you as a reasonable and reliable source if you require testimony or documentation. I am a high school guidance counselor, and happy to be living in Canada. Nevertheless, it has occurred to me that one day I will need to attend the funeral of my parents or carry out emergency family obligations when my family most needs my aid.

For the latter reasons, and most assuredly to bring dignity and righteousness over the indignities of Vietnam, amnesty needs to come.

I'm sure that at this point in time, the American people will finally listen to you.

Yours truly,

NICHOLAS M. CARPINELLI.

A YOUNG MAN'S CASE AGAINST MILITARY INDIFFERENCE, INJUSTICE, AND ILLEGALITY

(By Nicholas Carpinelli)

There is a respect that I have for all human life. This respect has remained consistent since I was 18, when I filed my first selective service application and its accompanying letter of conviction. At that time I believed that I might be a conscientious objector except that I believed that where international education and justice had failed (the deterioration of which can be the *only* justification for war), the United States had no other recourse but to invest greatly in its national security and territorial integrity. I am a realist who fully understands and respects the military role of this great nation. Each man in a democracy, however, must choose for himself whether he is a teacher and shaper of human behavior, or a destroyer of life. This fact becomes increasingly timely and immediate when the American Congress, aided by the industrial-military complex, has launched an illegal war against both Vietnam and the American Electorate!

I worked hard and patiently as a teacher in one of America's worst ghettoes. I was often frustrated and hurt by Chicago's lack of conscience vis a vis the

Negro. But I loved my children and was dedicated to them while hating the educational system that I inherited—overcrowded rooms and no counseling or attention for these problem children. There was only my dedication amidst a sea of unfeeling people, hardened by the system.

In the words of the distinguished former Secretary of State Dean Rusk, military service can and should be waived for students of merit who would contribute to the national welfare in either the Peace Corps or work in our cities' ghettoes. Although this has not as yet become law, the local draft board must have the intelligence and the discretion to recognize the priority that must be placed on our vital problems at home. Without people of experience and conviction contributing to the national welfare, disruption and social deterioration will continue to occur domestically.

My two years service in the National Teacher Corps was a commitment as dangerous and frustrating as any tour of duty in Vietnam. I taught in a riot-torn area of Chicago's South Side where violence and murder were the rule of the day. My white presence was daily threatened in a black power area. Children of ages nine to thirteen were already equipping themselves with homemade "zip" guns for gang warfare against the "Disciples," "Camaro's," and "43rd Street." My teaching experience included disarming youngsters of weapons, breaking up fights, and acting as security watchman for the school when high school students and local gangs threatened to attack (steel chains were also locked to the doors to insure a rather precarious safety). During one of my lunch hours, my sixth grade pupil, Robert Hampton, was shot. As was to be expected the police swarmed around the school offering their notoriously inadequate "token protection after the fact."

I believe that I have already served my country courageously; I do not want another tour of duty for the U.S. Army. I have been trained to work with problem children for which I was awarded a Master's Degree in Urban Education and Teacher Corps certificate. The Teacher Corps certificate reads that I "served as a member of a special band of men and women who typify this nation's intent that equal and adequate education becomes a reality for all American children, having demonstrated service and achievement in school and community . . ."

At present I am employed by the Farmingdale Public Schools as a special teacher in a project that is both federally supported and locally administered. My program, a Title I project of the Department of Health, Education, and Welfare, involves an almost clinical approach to the growth and teaching of Farmingdale's most poorly educated, problem learners. Farmingdale would be hard pressed to find a teacher of my experience and dedication. On several occasions my students asked me whether I would miss them next year (they were concerned because they had found both an understanding teacher and a friend), while another student graciously invited me to dinner at his home (an Italian meal brilliantly executed by one of Farmingdale's finest Irish families).

In addition I am now writing a day to day curriculum for the "slow learner" under the auspices of the Federal Government and the Farmingdale Public Schools. This project is designed to develop lesson plans in the social studies, and will take a good deal of time to complete. Its importance to the future of the children of the Farmingdale district is of inestimable value.

The content of this entire self-portrait has been articulated to Local Board No. 3 of Great Neck, N.Y. Their answer to me was a I–A classification. It is because of the draft board's indifference and "deaf ear" to my case that I was compelled to appeal the decision and apply for a personal interview, which I was granted. "Procedural Justice" had taken its course. The personal interview was a mechanical farce of questions imposed by the interviewing panel. The questions that they asked me were loaded with innuendoes and a style of pre-practiced intimidation. The Appeal Board voted unanimously against my case and I was again reclassified I–A with an *instantaneous* letter of induction for April 17, 1969!

In desperation I telephoned Mr. William J. Dougherty, Government Appeal Agent and dubious public relations man for the Great Neck Draft Board. I explained my case to him. I told him of my teaching background and my present contribution to the Farmingdale community. I asked him why I was one of the few teachers (no teacher has been drafted in Farmingdale), on Long Island who was not reclassified 2–A for teaching. His irreverent answer to me was "Well, you understand, son, that the people on the draft board have a big job to do and that they can't do justice for everyone!" I don't know how, but I thanked the man for his services and tried to remain as respectful of his position as I could, without either laughing or crying over his outrageous hypocrisy. Mr. Dougherty's "well

you can't win them all" attitude is quite parallel to the total indifference with which my case was handled by Local Board No. 3 of Great Neck. It is not reassuring to know that at a certain date you will be a Vietnam casualty because "everybody makes mistakes." That carries as much logic as the arguments over the shape of a "peace table" while innocent boys are getting killed, and broken families must live in the shadow of death for lost children and husbands.

At the insistence of the Farmingdale Public Schools, the Great Neck Board granted me a postponement of induction until the first draft call in July. This occurred as the result of a letter that explained the undue hardship that would prevail upon my eighth graders as the result of my induction. In other words the draft could give a damn about the education of our youngsters, until someone stands up and says you are ruining and disrupting the lives of children who require special education.

I must admit that at this point I am outraged. The bigotry and the injustice of the draft have gone too far. The majority of teachers on Long Island will receive a deferment, while with my background, Master's Degree, and permanent certification Great Neck will induct (abduct) me into the army. Friends of mine are receiving deferments from Grumman's for just about everything including sweeping the floors—Why?—because Grumman's is an industrial-military plant essential to the security of the nation. The fact that someone my age has the capacity to screw a nut on the bolt of an airplane makes that job much more "essential" than my job which only has to do with the lives of children and the future of American democracy. I find something ironic about this latter situation.

It should be clearly understood that absolutely no life should be spared for the farce in Vietnam. As I presently fear induction, I hope that no young man my age loses his deferment.

As a teacher of social studies I must instruct all the citizens that read this paper, that the war in Vietnam has been totally discredited, and found illegal and immoral on all points. Many of the groups that are fighting the U.S. in South Vietnam are innocent nationalists, not communists. The threat of communism was thrown to the American public as a fraud to conceal the act that an increasingly dangerous military-industrial lobby in Washington has been pushing the Vietnam War on and on, because it is good for big business! This argument has just been substantiated by General David Shoup in his article "The New American Militarism," in the April 1969 issue of *The Atlantic*. The Pentagon has been lying to the American public, as was brought out by the Senate Foreign Relations Committee vis a vis Undersecretary of Defense David Packard's fraudulent testimony concerning Dr. Wolfgang Panofsky and the ABM system.[1]

The draft system and the military-industrial complex, as President Eisenhower had warned, is getting out of hand. The Army is violating democratic processes at every turn. When America voted for Nixon, it was voting for an end to the war. Instead of honesty from the new administration, American citizens have received Madison Avenue deception, higher taxation, and a permanent continuation of national crime and chaos in the cities, along with every other national problem.

The militarists are making money on the war, while the taxpayer is paying $30 billion a year. It is now time for Long Islanders and America to act. Congress must not appropriate any more money to the war. It will be the responsibility of every taxpayer to pressure Congress on this issue. There is much that can be done.

I am not a conscientious objector to war, but I detest the Vietnam war on legal, moral, and intellectual grounds. The laws of America are based on and granted power by the justice of God. When the military breaches the right of an individual to resist induction into the war in Vietnam, the military has broken the justice that makes America a great democracy. It throws America into a sea of ugly despair known as totalitarianism. How ironic that the great heroes of the military who are supposed to be containing communism abroad, have brought a communist styled form of injustice to America.

Once a man is in uniform, the Constitution of the Umited States and the Bill of Rights no longer apply. George Washington, Thomas Jefferson, and Benjamin Franklin would roll in their graves if they saw what the military-industrial complex was pulling off. The great Chief Justice John Marshall would have declared the war in Vietnam and the Army's breach of the freedom of speech, UNCONSTITUTIONAL! So what is the Supreme Court doing? Or is the Supreme Court permanently out to lunch!

---

[1] Packard claimed that Panofsky approved the ABM when indeed he hadn't been interviewed.

Democracy is now being threatened in these United States. The President and his administration are now acting without the consent of the governed. Why hasn't the Supreme Court, which used to be the third branch of government declared the war unconstitutional?

I have recently decided neither to bomb my draft board, burn my draft card, scream profanities at police officers, go to jail, nor catch the first train to Canada. I am an American citizen, and I believe in the evolutionary processes of law, freedom, and democracy. I want to stay home and challenge the morality of this issue. I hope that the Administration has the honesty to face me; only then will America be a better place in which to live. I am a patriot of the American Revolutionary variety, I shall fight for justice against injustice, I shall fight taxation without representation, and I shall remain an American until the races of this country have united as brothers.

Finally, I shall mail a copy of this letter to my Senators and all interested publishers, who will in turn inform the American public as to the fate of this young citizen, Nicholas Carpinelli, in the face of the notorious Local Draft Board No. 3 in Great Neck. The question then becomes, "Does America need a highly trained and specialized teacher more than it needs a lackey for the Army?" Address your comments to Local Board No. 3, 17 Maple Drive, Second Floor, Great Neck, N.Y. 11021 and to your congressman.

IMMACULATE HEART COMMUNITY,
Los Angeles, Calif., March 3, 1974.

Congressman ROBERT W. KASTENMEIER,
Chairman, House Judiciary Subcommittee, No. 3,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: Enclosed is the statement for amnesty endorsed by the Action-for-Social-Justice Committee of the Immaculate Heart Community. The Community is a group of 235 women and men who strive both individually and collectively to give witness to the Christian message.

I was told by Fr. Edward McGowan, S.J., Director of RECONCILE, that your subcommittee would be having hearings on amnesty next week, and that all statements would go in the record. I trust that this is true, and pray that your hearings will persuade the members of the subcommittee to proceed with all deliberate speed toward the enactment of universal and unconditional amnesty.

Sincerely yours,

Pat Reif, IHM,
Action-for-Social-Justice Coordinator.

P.S. The I.H. Community consists of 235 women and men committed to giving witness to the Christian message.

STATEMENT CONCERNING AMNESTY

We, the members of the Action-for-Social-Justice Committee of the Immaculate Heart Community, believe in universal and unconditional amnesty for all those who were or are in conflict with the law for nonviolent acts of opposition to the war in southeast Asia.

Our belief is rooted in two fundamental teachings of our Christian heritage: 1) the defense of freedom of conscience, that is, the duty of individuals to judge for themselves what is right in the face of conflicting obligations; and 2) the recognition that our society is founded on a higher law than that enacted by human persons.

We understand amnesty not simply as forgetting or forgiving, but as deliberately deciding to grant immunity for those who face prosecution, and to release those now indicted or imprisoned. In effect this means blotting out the "offense", wiping the slate clean—for the sake of reconciliation and a new beginning.

It is our conviction that none of us came out of the war pure and blameless. There is need for reconciliation between those who made the war, from whatever motive or intent, those who fought the war, with whatever pride or regrets, those who fled the war, for whatever reasons, noble or ignoble, those who lost loved ones in the war, with whatever subsequent feelings, and those who opposed the war, but too late and too feebly.

So, rather than preoccupying ourselves with the painful and divisive process of legal prosecution, we favor amnesty as a way of freeing ourselves for the task of post-war reconciliation and healing.

By "universal" amnesty we mean to include the estimated 10,000 draft resisters and military deserters who are in civil or military prison, on probation, or awaiting court action; the 80,000 draft resisters and military deserters who are underground in the United States; the 60,000 to 100,000 draft resisters and military deserters who are in exile; and the 388,000 Vietnam veterans with "less-than-honorable" discharges.[1]

By "unconditional" amnesty we mean that no form of alternative service should be required as a condition for granting immunity from prosecution or release from prison. Such service is punitive, and it imputes guilt to potential recipients—both of which we find unacceptable.

We cannot now restore to life our dead soldiers, nor those of the Vietnamese. We cannot undo the devastation wrought upon the lands and people of Indochina. We cannot assuage the suffering of one group of Americans by being vindictive toward another. But we can repent, and begin again—to "bind the wounds of the nation" (Abraham Lincoln) and to work for a lasting peace.

Kansas City, Mo., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice

DEAR SIR: The Secretary of our Provincial Assembly sent a copy of your letter regarding the statement we sent last August on our position on amnesty. We would like to have it included in the record of the hearings. I am enclosing our statement in case you no longer have the first letter.

Sincerely,

Sister AUDREY OLSON, C.S.J.,
Coordinator, Social Action Secretariat
St. Louis Province, Sisters of St. Joseph of Carondelet.

St. Louis, Mo., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman,
Subcommittee on Courts, Civil Liberties, and the Administration of Justice

DEAR SIR: As the Provincial Assembly of the St. Louis Province of the Sisters of St. Joseph of Carondelet, we are striving to live the gospel message of peace and are committed to the special task of helping to bring about reconciliation in today's world.

For several years, families, communities, and people of our nation have been divided over the rightness or wrongness of our government's military actions in Southeast Asia. Those who have experienced the greatest hostility and have been called upon for the greatest sacrifices have been the yound men who had to choose whether or not to serve in our nation's military forces. Ironically, both those who served and those who refused to serve have found themselves among the chief victims of our nation's strife.

Uniting with other religious leaders in our nation, we call upon our government to take prompt and specific steps to transform the climate of hostility, generated at home and abroad as a result of its military involvement, into a climate of reconciliation and understanding. We support the resolution of the National Conference of Catholic Bishops:

Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spiritual. Our returning veterans, and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war.

We therefore urge you to grant immediately, amnesty to those who, for reasons of conscience, are in exile, in prison or in legal difficulty because of the war.

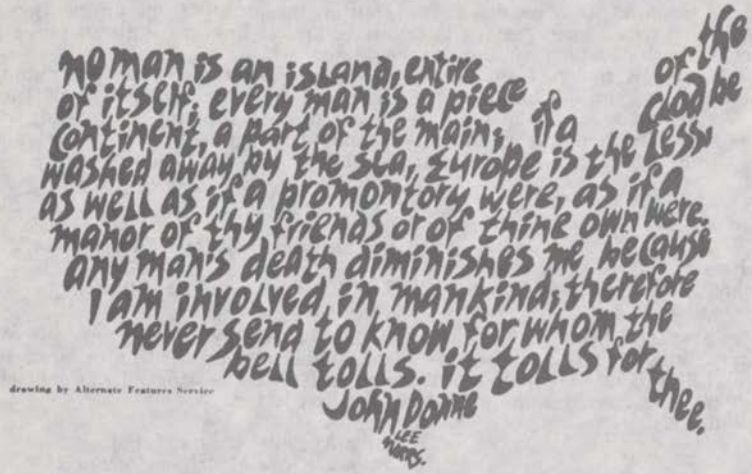
Respectfully yours,

SISTERS OF ST. JOSEPH OF CARONDELET.

---

[1] The estimated figures appeared in the New York Times, Jan. 30, 1973.

The Legal and Historical Case for Amnesty



One Nation, Indivisible

by Harrop Freeman

A FELLOWSHIP REPRINT
(from the Winter, 1972 issue)

Amnesty As Reconciliation

Though the war in southeast Asia is far from over—despite the lull in our consciousness of its still-terrible depradations—it is time to put our energies behind the cause of amnesty. Most simply, amnesty will involve release of the more than 500 draft resisters now in our federal jails, immunity from prosecution for the 70,000 or more refugees from the draft who are living as exiles in Canada and other nations, and freedom for the 9,500 soldiers either serving sentences in military stockades or confined there awaiting trial for violation of the military code. Amnesty is an issue that can reactivate our peace impulses and contribute to a desperately needed reconciliation in the United States—reconciliation between a government that made a tragic mistake and the young persons of all classes and colors who are being victimized by that mistake.

Amnesty is an issue which has already been eloquently subscribed to by prominent Americans. In a statement issued October 15, a group including Kenneth Clark, Erik Erikson, Ernest Gruening, Charles Silberman and Andrew Young petitioned Congress, the President and the public to bring amnesty into the very center of our current thought and action.

We say: Let them go and let their records be made clean. Let go those who refused to fight a war that we as a nation have come to detest and to believe wrongly fought. Let go those who ran afoul of military law during a war which many think is itself illegal. Erase the taint on the good name and careers of young men with war-connected prison sentences or less than honorable discharges.

Let there be no legal recriminations among ourselves for the fighting or the refusing to fight this war. The healing and reconciliation of the nation, its redirection toward peace with itself, will be difficult enough. It will be folly to make it even harder by exacting heavy legal penalties from these young men.

Advocating that those who fled to Canada and elsewhere be permitted to return, freed of legal impediments, the statement notes that the alternative is the creation of a class of political exiles "haunting us for decade after decade." Abraham Lincoln's granting of amnesty to the soldiers of the Confederacy is seen as a precedent for an act of amnesty today.

But President Nixon is not President Lincoln, and appeals like this one tend to be stigmatized as the crying of liberals and bleeding-hearts. So, in backing this statement, we would hope that the amnesty issue would be taken up within the

very center of the churches, not merely at the peace-movement edge. And we would encourage consideration of a symbolic act. Let the ecumenical Clergy and Laymen Concerned see that a brief statement on amnesty, relating it to the new beginning and reconciliation of Jesus Christ, is circulated to local congregations throughout the land and let clergy allow this petition to become an "offering" from amnesty-inclined church members to the President and Congress. If a truly grass-roots effort to solicit petitions and other overtures from local lay people were undertaken, we would have at once a far more effective lobby than is now representing the churches, and we would also create discussion of amnesty and its relation to the gospel at precisely the place where a renewed church should look for renewed social relevance—the local congregation.

To this we would add not a proposal but a prayer that issues will arise which will enable law-abiding Americans to resist the tide in our national life that evidences a cynical governmental disregard for basic liberties and justices. We see amnesty as one such issue to which a broad spectrum of Americans can relate if the approach to them is one of genuine reconciliation.

(An editorial, reprinted by permission from The Christian Century, *November 24, 1971.)*

One Nation, Indivisible

At no time in the history of this country has the nation been so divided, the opposition to war so widespread, the cry so loud, for "law and order," on the one hand, and on the other, that liberty is sacrificed and justice is dead. Nor have the courts and jails ever been so full of political protesters.

Although some have placed the figures higher, there are at least 140,000 AWOLs and draft resisters, at least 100,000 men who have failed to register or otherwise avoided the draft, at least 35,000 civilians since the beginning of World War II convicted in draft cases. There are untold numbers of soldiers who have been disciplined for anti-war sentiments and activities, perhaps 200,000 people of all ages arrested, imprisoned and/or fined for anti-war marches and demonstrations, a sizeable number being tried or convicted for civil disobedience, burning of draft records and like offenses, not to mention those charged with supporting the Black Panthers

or demonstrating at political conventions as in Chicago. All these are asserted to be political offenses and are presently unamnestied and unpardoned. We are not speaking here in any sense of so-called "criminals" who refuse the duties of society or seek to save their own skins. We are talking about priests such as Berrigan and Groppi, academics such as Lynd, baby doctors like Spock and the sons and daughters of cabinet members and middleclass America. In the college communities today (on which we must depend for future leadership) possibly one student in every three has in some way been involved in these political "crimes". For many, acting on their convictions has meant a loss of their right to participate in government.

Any nation, and particularly a democracy, needs all its best minds. It cannot afford to banish its potential leaders—those who ardently seek change as well as those who defend the status quo. Amnesty has been devised as a means of society "forgiving" those whose acts were basically political, even though at the time society branded them as criminal. In this way, we build the "nation indivisible."

Amnesty in Pre-American History

Amnesty is a concept of public law, derived from the Greek *amnestia* (oblivious intentional overlooking, from the same stem as amnesia). It is the act of the legal sovereign voluntarily nullifying certain "criminal" acts against the state, almost always political offenses. Some view it as a principle of international law binding on the sovereign.

Most historians view amnesty's beginning in the act of Thrasybulus, who in 403 B.C., after the expulsion of the Tyrants from Athens, forbade further prosecution or action against citizens for previous political acts and required an oath of amnesty to erase all political strife from memory. There are other examples in the Greek period. In Roman law the practice became common after attempts at political overthrow or intrigue, and was known as *restitutio in integrum*.

France has a long history of amnesties after virtually every civil strife. These were called *lettres de remission generale or lettres d'abolition*. Instances include: the Edict of Nantes (1598), nearly thirty examples between the Napoleonic imperial decree of 1802 and the amnesty of 1881 following the Paris Commune and 1871 civil disturbances, amnesty of wartime deserters and military service evaders (1919),

amnesties for Alsatian insurrectionists and communist agitators (1920-40), amnesties of persons convicted of war-related crimes in World War II and the Algerian war.

With English history we begin to see both the importance of amnesty in Anglo-American law and the source of much of the confusion between pardon and amnesty. The most famous early amnesties were in 1651 after the Civil War, in 1660 by Parliament under Charles II, in the Fenians Act of 1873 and the Boer amnesty of 1903. The theory of pardons, remissions and amnesties in Britain was that these were "sovereign" powers embodied in the king. We must realize that the king holds powers in many capacities: as executive, as judiciary, as the king in Parliament. Because all pardons, remissions, and amnesties were issued in the name of the king little attention was given to the action of Parliament.

In the Americas (excluding the United States) the practice of amnesty is well developed. A survey of only the year following World War II would show that at least in Argentina, Brazil and Canada amnesties were granted to political prisoners. Similar action could be found in the same year in Bulgaria, Greece, India, Italy, the U.S.S.R., Yugoslavia and other European countries. In 1946 General MacArthur released nearly one million political prisoners in Japan and General Clay proclaimed an "amnesty for over one million German political offenders under age twenty-seven."

Amnesty in the United States

United States history is replete with general "pardons" and "amnesties" for political offenses. Immediately after the Revolution, Congress restored all rights to the Loyalists who did not flee to Canada. On July 4, 1794 President Washington granted "pardons" to all who participated in the "Whiskey Rebellion." In 1800, President Adams gave a general pardon to "the late wicked and treasonable insurrection against the just authority of the United States of sundry persons in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania", the so-called "house tax insurrection" of 1798.

The Civil War period was marked by extensive amnesties, even for treason, and by conflict between Congressional and Presidential power. Presidents Lincoln and Johnson were both much quicker in forgiving the insurgents than was Congress. In the confiscation law of 1862 Congress had given the President power to "pardon and amnesty" those participating in the rebellion. Lincoln acted twice, Johnson four times. The Presidents accordingly labelled their action as

"general pardons and amnesty" for those participating in rebellion. Progressively broader amnesties were proposed although the most inclusive (all participants except Jefferson Davis) was defeated by Sumner. Congress then enacted the Wade-Davis amnesty bill on the theory that it had not delegated the total amnesty power to the President. Finally, in 1876 Congress passed a complete and all-inclusive amnesty.

After the Civil War both the practice and the confusion of pardon-amnesty continued. President Wilson pardoned a list of political opponents to World War I and refused others (e.g. Eugene Debs). President Coolidge remitted citizenship and civil rights to men who deserted the armed forces between the end of World War I hostilities and the formal termination of the war (called an amnesty). Franklin D. Roosevelt granted "full pardon" on Christmas of 1933 to all violators of the World War I draft laws and the 1917 espionage law.

But the draft Act of 1940 introduced some very confusing history. At Christmas, 1945, President Truman granted a full pardon for all federal non-military crimes to every World War II honorably discharged veteran, stating at the time that he was considering a general "amnesty". In response to this an independent Committee for Amnesty was formed of such well known persons as A. J. Muste, Dorothy Canfield Fisher, Henry Luce, Pearl Buck, Thomas Mann, Thornton Wilder, Harry Emerson Fosdick, Thurgood Marshall and Frank Graham. In 1946 President Truman appointed a "President's Amnesty Board" headed by Supreme Court Justice Roberts. A Gallup poll of January 28, 1947 showed 69% favoring amnesty and 23% opposed. Over 100 organizations, representing church, union, civil rights and humanitarian groups, urged amnesty. Major newspapers editorialized for amnesty. Then the President's Amnesty Board did a peculiar thing by in effect resolving itself into a parole board which considered the Selective Service violators case by case. Ultimately it reached 1523 cases of obvious injustice (out of 15-20,000 actually convicted) who were thereupon pardoned by the President in December 1947. The Board then ceased to function. After America entered the Korean War, there was again a strong demand for amnesty (for both wars). Instead of granting it the President in December, 1950 proclaimed pardons (similar to the Coolidge action) for all federal crimes to veterans honorably discharged with one year's service after June 1950 and remitted citizenship and civil rights to all persons convicted of military desertion from August 1945 to July 1950.

There was again an organized move for amnesty in 1953, but nothing came of it. No further amnesties or general pardons have occurred since. Therefore, all political prisoners not covered by the Roosevelt Proclamation of 1933; all Selective Service violators of World War II, Korean and Vietnam wars, and the intervening periods; all persons convicted since 1933 of political crimes; all persons subject to prosecution for any of these crimes (unless covered by one of the pardons for honorably discharged veterans) are today unamnestied and effectively deprived of their rights as citizens —and the country is deprived of their potential leadership.

Amnesty and Pardon Distinguished

As has been shown, there has been considerable confusion among the laity between pardon and amnesty. But it does not appear to this writer that there is or should be any legal confusion.

In *Burdick v. United States* (1914) the Court defined the concept of amnesty as compared to pardon:

> *The one (amnesty) overlooks offense; the other (pardon) remits punishment. The first is usually addressed to crimes against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the state. "Amnesty" is usually general, addressed to classes or even communities—a legislative act or under legislation, constitutional or statutory—the act of the supreme magistrate.*

In *U.S. v. Bassett* in 1887, a case involving Congress authorizing the President, the Court ruled similarly.

State v. Blalock (1867) is usually taken as the classic statement in state courts:

> *"Amnesty" and "pardon" are not precisely the same. Pardon is granted to one who is certainly guilty, sometimes before, but usually after, conviction. Courts take no notice of it unless pleaded or claimed by the person pardoned, and it is usually granted by the crown or by the executive; but "amnesty" is to those who may be guilty, and is usually granted by the Parliament or the Legislature, and to the whole classes before trial. "Amnesty" is the abolition or oblivion of the offense; "pardon" is its forgiveness.*

The Constitution (Article II, Section 2) vests the power to pardon in the office of the President. Moreover, English

history, from which we derive our theories of government, confirms that pardon is an executive function. The Supreme Court, in *Ex parte Garland* (1866), stated that "this power is not subject to legislative control," although some state legislatures continue to issue pardons.

But the generally accepted theory of pardon is that it assumes proven guilt and imposed punishment. Some have tried to establish that a "full and complete" or "general" pardon is nearly the equivalent of amnesty but I find no modern supreme court acceptance of this view.

Amnesty, I believe, belongs only to the United States Congress, as the examples cited above will show. The *Encyclopedia of Social Sciences* agrees and the only law review article on the subject (Mississippi Law Journal 16:127 1944) coincides.

I hold also that although the original Constitution nowhere placed the amnesty power specifically, it follows the same general rule as in the British system, that is that it belongs to Parliament or the people (in America covered by Amendments IX and X of our Constitution). Congress would then exercise it in the name of the people. Amendment XIV, section 3, adopted after the president-congress conflict of the Civil War clearly assumes the power of amnesty as vested in Congress.

Other precedents (not cited here but see my fuller article in the Arizona Law and Social Order Journal, 1971) make it clear to me that while the President should grant pardons for all past offenses for which there has been a conviction, Congress should grant an amnesty for all political activity.

Since so many of our political offenders have been prosecuted under state laws of trespass, unlawful assembly, etc., can Congress or the President pardon or amnesty them? It is my opinion that insofar as a state conviction punishes one for acts against the federal government, e.g. destruction of draft files, the President and Congress have power.

What Offenses are Amnestiable?

What is "political" is a point on which we cannot expect to find much court law, for courts generally refuse to rule on political issues. Thus the very term "political crimes" is an anomaly, since courts do determine all criminal cases. Where the courts have spoken in general terms they define as "political" anything pertaining to governmental policy, or an action or belief held by groups who strive to gain control

of government, but rule out anarchy and revolution. The most recent case (Holden v. Finch, May 17, 1971) holds that citizen protest marches are political under the Hatch Act and civil service regulations.

These definitions become wholly inadequate when we look at the deportation and extradition statutes and cases, the only place in which the United States seems to define political "crimes". The Refugee Relief Act of 1953 and the Displaced Persons Act of 1948 permit stay of deportation and acquisition of immigrant status if return to the country of former residence would cause political persecution or fear of persecution. This turns out to be persecution on account of race, religion, political beliefs or activity. Under the extradition statutes, treaties and cases, "political offenses" are not extraditable because United States legal process cannot be used by a foreign government as reprisal against its political opponents. In fact, in order to prevent extradition for murder or other violent crimes it is necessary for the person to prove that he was part of a revolutionary movement, political uprising or opposition. Giving orders to kill during a war (and presumably refusing orders to kill or participate in war acts) is a political crime, according to a Ninth Circuit Court decision in 1957. And treason would certainly be. There is indication in the cases that the requirement of army service, or the act of going to another country or claiming foreign citizenship to avoid such service, are viewed as political.

But it is the historical examples of the use of amnesty that would seem determinative. Amnesty has been used to erase treason, insurrection, attempted political overthrow, tax refusal, civil and racial strife, draft avoidance, army desertion, disloyalty and espionage, even bigamy, polygamy and murder, particularly when these are caused by a political-racial-religious claim of necessity.

Every class of offense listed at the beginning of this article and claimed by the participants to be political would seem to come within one of these definitions and examples: the Berrigans, the San Francisco Stockade "mutiny", the Catonsville Nine, Chicago Seven, Milwaukee Fourteen, New Jersey Eight, the AWOL's and deserters, the draft evaders and avoiders, those arrested for trespass, riot, etc. in Washington, D. C. mobilizations and sit-ins, even Angela Davis and Panthers Seale and Newton. All these claim to have engaged in law violations (if any) to make the government change erroneous or illegal war, foreign policy, racial sup-

pression, or citizen disenfranchisement practices.

It may be desirable to ask the question in another way: what criteria might be used to determine what are "ordinary crimes" (not to be amnestied) and "political crimes" (to be amnestied). The following is by no means a complete list but rather an indication of the important considerations:

1) Has the position for which the prisoner stood now become generally accepted in the community?

2) Has the government activity against which protest was made been ended?

3) Was the action taken originally as an expression of religion, conscience or other First Amendment right?

4) Were the conditions (prison, race, police brutality) such obvious failings of government that the citizenry ought to be encouraged to speak out?

5) Does the policy of the government against which protest was made (e.g. the war) represent a relatively small political group imposing its will upon the citizenry without a clear mandate, thus lacking democratic sanction and bound to elicit protest?

6) Was the original action non-violent and therefore nearest to protection as free speech?

7) Was the crime one generally condemned by all society as against the peace and good order of the people, with few if any political overtones?

8) Is the so-called political position that of anarchy?

9) Even if the original crime for which a person is in jail was non-political, has the matter of confinement turned into a political imprisonment or harassment?

10) Can society expect no serious threat if it releases the prisoner?

It would seem to this writer quite possible to formulate proper criteria, to set up a Board if necessary to sort out borderline cases; and the bugaboo argument of "would you release *all* criminals?" has little relevance.

Where are We Now?

We said earlier that never has the problem been so large or important in United States history. We now have the largest number of unamnestied and unpardoned political offenders—many of our finest young people and potential leaders. The offenses are backed up all the way to World War I and II. Nowhere else in the world are political offend-

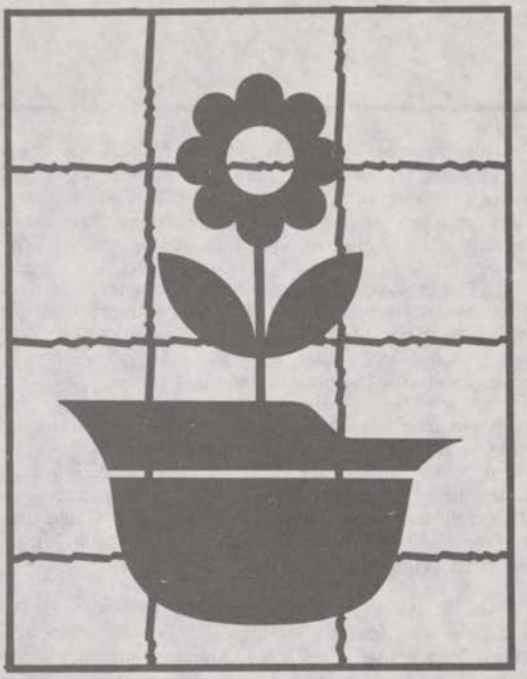
ers treated as common criminals; even in Greece and some of the most dictatorial countries they are placed under house arrest or allowed to move to another country. In most they are amnestied and allowed to retry for political power (e.g. Big Minh in South Vietnam).

We need to begin immediately to erase this blot on American democracy. Even more we need to recruit these critics of society into the political process of changing society, which most everyone recognizes needs changing. One investigating committee of the Attica prison revolt now admits that 28 of the 30 prisoner demands should have been implemented. It may be small satisfaction to the Berrigans and other anti-war "criminals" but there is now general political agreement on the error of the Vietnam war. Rosa Park's feet and the busted head of many a demonstrator may hurt no less, but desegregation is becoming a reality. The nation has a profound interest in allowing to reformists the most radical means of shaking us from our lethargy. The more urgent the need for reform, the more radical must be the means of getting public attention and action.

Senator Edward Kennedy has introduced a bill in the present Congress as an alternative to further Selective Service extension which proposes an amnesty "study" for Congress. At least three presidential "candidates" have advocated amnesty. This is a start, but not enough. It would seem desirable for Congress and the President to appoint a Joint Committee to study the whole problem of pardon and amnesty going back to World War I, to recommend to the President and Congress what should be done so as to wipe out all the offenses and return all these citizens to where they are needed, in

One Nation Indivisible, with
Liberty and Justice for all.

This is a shortened version of an article fully documented by historical citations, appearing in the Fall, 1971 volume of the Arizona State University Law and Social Order Journal, Tempe, Arizona.



AMNESTY

why?

for whom?

The War Resisters League, founded in 1923, believes war to be the ultimate crime against humanity. We advocate nonviolent resistance for creating a democratic society free of war, racism and human exploitation. For us, nonviolence means action without hatred, revolution without guns, justice without prisons.

The League is deeply concerned with amnesty not only because thousands of our members have been imprisoned for their opposition to war. As one of the organizations advocating resistance and non-cooperation with the military, we feel a moral responsibility for the men in exile and prison.

The League played a leading role in organizing the mass demonstrations against the Vietnamese war as an affirmation of our conviction that the human choice is one world—all 3½ billions of us—or none. Similarly, our commitment to amnesty is not only out of concern for those whom it would affect, but also for the healing and reconciliation it would bring to the American community.

Many of you were part of the active opposition to the Vietnam War. Will you join us in this campaign for amnesty? Your actions helped silence the guns. Your actions now can help to open our borders for the exile, the prison door for the resister, and the American community to a reconciliation which would encourage the possibilities for a decent society.



The War Resisters League is affiliated with the
War Resisters' International
and the
International Confederation for Disarmament and Peace

25M—June 1973

AMNESTY – WHY? FOR WHOM?

The Vietnam war was the longest in our history–and one of the most bitter we ever fought, leaving us as a people more deeply divided than any conflict since our own Civil War more than a century ago. 55,000 Americans died in Vietnam, hundreds of thousands were wounded–many crippled for life–and more than two hundred billion dollars spent. For the Vietnamese the cost was even greater: more than a million dead, wounded beyond count, several millions made refugees, hundreds of towns and cities destroyed.

The war was controversial but now we find that the peace is controversial also. For there was another cost of war: the men who resisted the draft, deserted from the military, went underground, or fled the country into exile. President Nixon has repeatedly referred to these men as being only "a few hundred" misfits and malcontents who refused to serve their country in time of war. The figures are actually far higher. One estimate was given in the *New York Times*, January 30, 1973:

10,000 draft resisters, military deserters–in civil or military prison, on probation, or awaiting court action.

80,000 draft resisters, military deserters–underground in the U.S.

60,000 to 100,000 draft resisters, military deserters in exile (largely in Canada).

388,000 Vietnam Veterans with less than honorable discharges.

This is a total of over a half million men actively involved in some form of resistance to the Vietnam war. The President has said these men will never be given an amnesty. Vice President Agnew has spoken about them with particular bitterness, implying they are traitors. Thus far every public opinion poll shows support for the President's position.

Draft Evaders: Who Are They?

Only about 7% of the men eligible for the draft were ever called to active duty. During the ten years of war we were a nation of draft evaders. Parents kept their children in college and safe from the draft. People got into the National Guard, leaving them exempt from service in Vietnam. There were draft counseling centers in every city and on most campuses. We are not blaming these men. The War Resisters League did everything in its power to keep men out of service by any legal means at hand: job exemptions, medical problems, conscientious objection, etc. In a society where the rich have tax accountants to help them evade paying as much income tax as possible, one can hardly blame young men from seeking every legal means to avoid serving in a war which most Americans opposed.

The point is simply that these men did evade the draft. They didn't burn draft cards or take part in peace demonstrations. They found legal ways of avoiding military service.

31-658 O - 74 - 45

Draft Resisters: Who Are They?

Starting in 1965 a growing number of young men came to feel very deeply that the war in Vietnam was wrong. Some of the men were deeply religious pacifists but many of the men had never thought much about war, never doubted they would serve their country when called–until they began to read reports of the war in Vietnam, how it started, the way our government was fighting it.

These men eventually formed "The Resistance," a loose organization of several thousand men of draft age. Almost every one of these men could have gotten exemptions from the draft, as college students, on medical grounds, etc. But they came to believe it was wrong for them to be exempt while others–the poor who could not afford college–were being drafted. One by one–then by the hundreds and by the thousands, these men burned their draft cards, refused to register for the draft, refused induction when called. They could have lived out the war safely, but instead they made their resistance open and were jailed. They evaded nothing –they resisted publicly and paid a heavy price in prison terms. Their lives and careers were disrupted, in many cases marriages broken or family ties disturbed.

And Who Were the Deserters?

I know a young man who lived in New York City and was referred to me by a friend back in 1967. He was a deserter who had been living underground with false I.D. He asked my advice and I told him he could go to Canada, or spend his life as a fugitive, always listening for a knock on the door, or he could return and serve out his term in the army. I said it was a hard choice but we would do all we could to get him a lawyer and get him discharged as a pacifist if he returned to base. Six months later he came by my apartment. He had taken my advice and returned but he couldn't take the conditions in the brig. The guards were ordered to shoot to kill any man trying to escape and if they did kill a man they got a special leave as bonus. The conditions were too brutal –my friend took a risk and escaped. Where he is now I don't know. He is one deserter, a quiet fellow who wanted to be an artist.

There was another young man I put up one night because he had emotional problems and couldn't take the strain. He was a temporary AWOL. He just needed a place to stay one night to think things through. In the morning he went back to his base. The most interesting deserter I met was a clean cut kid who had served a tour of duty in Vietnam. He had gone over as a gung-ho conservative, had enlisted for the chance to kill Communists. When I met him in New York he didn't ask for charity from anyone but got a carpentry job, saved enough money for a ticket to Canada, and came by the night he was leaving for a final talk. I asked him why he had deserted. He said that when he went into the army he was a Goldwater conservative, but after he had done his tour of duty he knew we were wrong, that Americans had no business being in Vietnam, and he had no business being in the army carrying out orders.

He couldn't get released as a pacifist, because there were wars he would fight in. He couldn't face five or ten years at hard labor in a brig, so he was off for Canada and the building of a new life. I think he probably made it—I certainly hope so. One of the surprising things we discovered in the peace movement was that the deserters were often men who had enlisted, had believed in the war, and deserted when they found out the facts. Some of these men whom Nixon has denounced were wounded in combat and have Purple Hearts. Some have medals for heroism in combat. But now they are underground in this country or in Canada or Sweden because they came to believe the war was wrong.

Who Are the Exiles?

Some of the men in exile are military deserters but most of them are draft resisters who, given a choice between a possible five year prison term for refusing induction, or military service in a war they deeply felt wrong, chose exile. Most of these men are in Canada. Many of them are becoming Canadian citizens and have no desire to return to the U.S. Many brought their wives with them, or married Canadians, finished schools, learned trades: they have made new lives for themselves.

Many others, however, want very much to return to this country. Their friends and families are here; they remember the fog in San Francisco or the sound of midnight subways in Manhattan. They remember the golden wheat in Kansas or the autumn forests of Maine. They want to come home. And here we have some paradoxes. There are men in Canada who are exiles but did serve in combat in Vietnam who would be arrested the moment they crossed the border. And yet, just across the border on the American side, are men who legally evaded the draft by staying in college and Nixon and Agnew say nothing about them.

There is another paradox about the exiles. With the exception of the American Indians, who were here when the rest of us arrived, and the blacks, who were brought here against their will, all of us came to this country as exiles. This land was built by exiles. The pilgrims landed at Plymouth Rock to practice their religion freely, without the constant arrests they had faced in England. Many French, Germans, Italians, Swedes, Poles, Russians, etc., fled to this country to escape the long periods of conscription imposed by the nations of Europe. (Several of my own German ancestors came for that reason.) Einstein came here because Germany had no room for Jews.

It is terribly painful for Americans to realize that perhaps a hundred thousand of our youth have left this country. We are hurt and, instead of asking what is wrong with us, we insist something is wrong with them. Isn't it time to realize that the brutality of the Vietnam war drove some very fine young men—some of the bravest hearts and best minds of our generation—into exile? Some of these men will never want to return, but shouldn't we open the borders of our nation to those who do?

Are You Saying All Resisters, Deserters, Exiles Are Heroes?

Of course not. Some fled to Canada out of simple fear. Some deserters deserted out of fear (though it is interesting to note the Pentagon, in breaking down the reasons for desertion, says that only 5% deserted for fear of being killed). Life is complex, human motives hard to judge. If some of those in exile or underground are there from fear, so too were some of those who served in Vietnam afraid to say no. They served, some of them, because they were afraid of prison, afraid of what their families or friends would say if they refused induction. During the war I got letter after letter from men serving in Vietnam who sent us money and encouragement—and wrote saying they were sorry they had lacked the courage to say "no" when they were drafted. There is a little of the coward and a little of the hero in us all.

Why The Resistance?

This pamphlet deals with amnesty, not with the Vietnam War. Yet it is impossible to discuss amnesty without asking why these men resisted the American government. We are not, after all, talking about a general amnesty for muggers and rapists, or for business executives who swindle clients or politicians who got involved in Watergate. We are talking about people—most of them men, some of them women—who came into conflict with the law because of the war.

In every war there have been some Americans who, for religious or moral reasons, refused military service and went to prison. In World War II, when almost every able-bodied man was in the armed forces, some 15,000 men were jailed for opposing the war, another 15,000 did "alternative service." That is 30,000 men. There were no exiles. But in this war nearly half a million Americans actively resisted the government, actively opposed the war. Only in this war did so many flee into exile. Only in this war did so high a percentage of men suffer less than honorable discharges for anti-war actions inside the armed forces. Why?

First, the resisters felt the war was unconstitutional because Congress never declared it. It was a war which grew slowly larger while the government kept the facts from the people—and even from the Congress itself. (In 1964, when Lyndon Johnson campaigned as a "peace candidate" against Barry Goldwater, he had already planned the massive escalation of the war that came one month after his inauguration, in February, 1965. When Richard Nixon, in 1968, said he had a "secret plan for peace," he didn't tell us he would in the next four years drop more bombs in Indochina than we had dropped in all of World War II.)

Second, the American intervention violated international law. The United Nations Charter, which is a binding treaty upon this country, obligates every nation to take any "threat to the peace" to the Security Council. We did not. The Geneva Accords of 1954, which ended the French role in Indochina, promised free elections in all of Vietnam, North and South, for 1956. We did not sign the Accords but made a strong public promise to abide by them. Yet even while

those Accords were being reached, we had already begun to sabotage them. It was American intervention which stopped the free elections in 1956 and left Vietnam divided, with South Vietnam under a military dictatorship.

Third, the war in Vietnam was a civil war. A cruel and tragic one, just as our own Civil War. But there were never Russian or Chinese troops fighting in Vietnam. The only power which sent in troops from the outside was the United States and its allies (South Korea, Australia, the Philippines, etc.) We went in without even an invitation—the U.S. State Department to this day cannot find any written memo, letter, or request from the government of South Vietnam for our troops. What we did in Vietnam was the same thing as if the English had sent a half million redcoats to the South in 1860 to back the Confederacy. That would have been a direct foreign invasion, just as our sending troops to Vietnam was an invasion. As such it violated the Nuremburg decisions, which ruled that planning and carrying out a war of aggression was an international crime—and that anyone, *from private to general,* who obeyed orders to take part in an illegal war **was committing a crime.** After World War II executed men who tried to argue they had only obeyed orders. Now, in Vietnam, some of our own youth said the orders were illegal and they would not obey them.

Finally there was the matter of *how* the war was waged. It was waged not only against Communist troops but against civilians. We poisoned wells, burned crops, set fires to the huts the peasants lived in, tortured and killed the prisoners. (In the infamous "Phoenix program" set up by the U.S., Ambassador Colby admitted more than 20,000 *civilians* in South Vietnam were assassinated as *suspected* Communists—without any arrest or trial. Others placed the number murdered at more than 40,000.) Our bombers were assigned "free fire zones" where they could kill *anything that moved*: children, water buffalo, troops. Even some of our weapons such as the infamous "pellet bombs" could not damage military installations—they could only maim or kill people standing in the open.

To a great many Americans the war in Vietnam was an illegitimate war. It was symbolized by My Lai. And these Americans felt they had a moral and civic duty to resist that war. We can understand the men who fought in the war because they believed that to be their duty—to serve without question. But we ask them to understand there is another kind of patriotism—to resist your own government when you feel it is in the wrong.

The Honorable Tradition of Resistance

Americans today are proud of our "Underground Railroad" which slipped slaves North into Canada and freedom —yet at that time slavery was legal, and the Underground Railroad an illegal act of resistance for which men and women were jailed. When Communist intellectuals in Russia speak out against Soviet political repression, we respect them. But when our own poets and intellectuals here spoke against the terror of Vietnam they were too often called

traitors. In World War II Willy Brandt fled Germany into exile in Scandanavia—and Hitler's government accused him of treason. Today Willy Brandt is the Chancellor of the German Federal Republic and has visited Washington D.C. as an honored guest.

Sometimes Nixon forgets that America was not built by conformists but by rebels. We are a nation born of revolution against unjust British rule. Should we, then, be surprised—or ashamed—to find American tradition strong enough that it moved so many of our youth to oppose their own government when they believed it to be wrong?

The Discharges

During the Vietnam War some 388,000 men were given "less than honorable" discharges. Some of these, of course, were for actual crimes against persons or property. But obviously the United States armed forces did not contain 388,000 criminals. The figure is just too high—too far out of line. Many of those discharges—we believe most of them —were for opposing the war in Vietnam or for struggling against racism in the military. We had a draft army made up largely of the poor—poor whites, poor blacks, poor Puerto Ricans, poor Chicanos. These were men who had lacked the money to escape the draft and instead found themselves being shot at, and being asked to kill, peasants in a distant country. Resistance to the war *within the armed forces* became so serious that some companies refused orders to move into combat and some aircraft carriers had to be pulled back out of service. These men, less than honorably discharged for "lack of discipline," now find themselves on the streets with little chance to get work. In some cases they are being driven to street crime or onto welfare rolls because they cannot get jobs.

War Crimes Trials Or Amnesty?

It has been argued by some that since so many Americans were killed or wounded in Vietnam, those who refused military service should "pay some price." But who should really pay a price? The men who resisted an unjust war, or those political and military leaders who brought this war on us? It would be easy for bitterness. One of my younger friends who did serve in Vietnam came back a heroin addict. He did not resist but served in combat. One must ask why some men made war profits while others died. One must ask why Congress, which deserted its post during the war, should not pay some price. Congress, most of whose members could have cut off war funds, should have asked the hard questions; they could have ended the war and saved lives. But they conformed, let themselves be lied to by the President. One must ask why leaders that brought us into this war are free. Shouldn't they face a trial of some kind?

After all, the men who deserted, who refused induction—they did not send your sons or brothers to Vietnam. But war crimes trials will not bring the dead to life. Sending some political leaders to prison will not give back the years others have already lost in prison for their resistance.

Let us stop asking *who* was wrong and start asking *what* went wrong. The nation has been hurt and divided by the war and amnesty does not mean forgiveness—it means forgetfulnes, a new beginning.

The Pain of Vietnam, The Power of Amnesty

What has made Vietnam so terribly painful is that it is the first war we lost. We are a proud people. We would like to blame someone or something for what went wrong. Nixon says it was "peace with honor," but it was—and we know it—defeat without honor. Most of Laos and Cambodia are now under the control of Communist-led movements. Most of the territory of South Vietnam is now under the control of the Provisional Revolutionary Government. Over a hundred thousand North Vietnamese troops remain in South Vietnam today—there were none when we intervened. No . . . after so much blood, so much agony, we were forced to withdraw leaving the "enemy" stronger than when we began.

Some will say that if only we had all backed the President we would have won. It is easy to forget the massive attacks we made on Vietnam, the huge army we sent in, the endless bombing that went on. If we lost, it was not because our troops fought badly—they fought bravely and well. We lost because our military power could not save a corrupt regime hated by its own people. We forget that people all over the world are, in many ways, very much the same: if Americans would fight with extraordinary bravery to defend our country from the British, how can we expect the Vietnamese to be different?

Rather than looking for scapegoats to blame for losing, shouldn't we ask if this was a war we even wanted to win? To have "won" we would have had to lose perhaps another hundred thousand Americans—and kill perhaps two or three million more Vietnamese. To have "won" we might have had to level all of Vietnam. Could we have lived with such a "victory"?

It is time for healing America, not dividing it. Time for thoughtfulness about the future, not bitterness about the past. Those who resisted the war did not send others to die. Many of us were arrested at induction centers trying to save your sons, husbands, brothers from this war.

What Price Did the Resisters Pay?

Those who fought in Vietnam often paid a heavy price —with their lives. Those who found legal ways of evading the draft paid no price at all. But what of the resisters, deserters, the men with less than honorable discharges? They have paid a price, with prison, with the pain of exile hundreds or thousands of miles from their homes, with the despair that comes from not finding work because the discharge is less than honorable.

What About an Amnesty Review Board?

Suggestions have been made that every case of desertion, resistance, etc., be reviewed "on its merits" by a special board. But why should those who had the courage to resist

now be presumed guilty until found innocent? If our men are to come before such boards, then why not Nixon, Rusk, Rostow, Westmoreland, and the others who bear guilt for the war? Those men drew up plans for the war. They knew of the inhuman way in which it was conducted. Either we have one aproach—unconditional amnesty—or we have another set of rules in which war resisters and war makers must both appear before Amnesty Review Boards.

When Did We Have Amnesty Before?

There is a long history of amnesty. After World War II a million Germans and a million Japanese were given full amnesty by the allies. In the Civil War amnesty was granted and General Lee, who led the Confederates States in armed rebellion, never went to jail. President Roosevelt amnestied those jailed in Warld War I and President Truman pardoned 10% of the men who had refused service in the second World War.

Conditional Amnesty

It has been suggested that those who refused to fight in the Vietnam war should be welcomed back into the American political community either by two years of constructive work (in slums, as hospital aides, etc.) or by serving out the balance of their army term. First, these men do not feel guilty. They resisted from conscience, often at great personal sacrifice. Their lives have already been disrupted and if there is a "price to pay" they feel they have already paid it.

But if there are those who insist *these* men must pay some penalty, then let me raise this question: should not every man who legally avoided military service also pay such a penalty?

Finally one comes back to the *central issue*. What are the resisters and deserters and exiles really guilty of? *They are guilty of resisting a war most Americans finally came to oppose*. They are guilty of resisting a war they deeply believed to be wrong. They are, in short, guilty of an act of courage. When most Americans were silent, they spoke out. With their very bodies they made a protest and would not kill. They sent no one else to die. They did not lie to the public. They made no fortunes from "cost plus" war contracts.

Amnesty: The Real Question

The essential issue of amnesty—the basic moral issue—does not involve those who resisted an unjust war, but those who got us into it. Amnesty means not only letting the resisters come home, be released from jail, be granted honorable discharges. It also means forgetfulness about the personal guilt of those who got us into this war—so that we can focus, instead, on what went wrong with our society as a whole. We say, yes, there should be amnesty for all *individuals* but not for the system. Nothing can be gained by trying to punish individuals who were caught up in the war, but much can be gained by examining and changing the system itself.

Amnesty and the Paris Agreements

One of the odd things about Nixon's bitter opposition to amnesty for American resisters is that it violates the Paris Agreements which ended the Vietnam war. Under those agreements the two Vietnamese sides are to release their political prisoners, allow full freedom of speech, press, etc.—regardless of which side they had supported in the war. Yet here in America Nixon is saying we cannot be as generous and reconciling as he asks the Vietnamese to be.

The Theory of Political Community

Some intellectuals, themselves critics of the Vietnam War, have raised the obligations people have to the "political community" in which they live. Under this theory, pacifists "fulfill" that obligation by refusing military service, but accepting the right of the State to imprison them. Such intellectuals note that Socrates refused to go into exile because, as a member of the Athens comunity, he realized it was better for him to die of hemlock within that community than to accept exile and break that tie.

The problem is that a "political community" must assume a fair exchange of facts and information in order for the people to reach a fair majority decision. One can say that if the people have been given the facts fully and come to a decision, those who reject that decision, even to the point of breaking the law, have "broken the sense of political community." But it was the political leadership of this country which consistently "broke the sense of political community." In 1964 and again in 1968 the people voted for Presidential candidates who promised peace—and instead we got more war. From the beginning of the war the Administrations withheld facts from us or deliberately lied to us.

Pacifists didn't go to prison because they felt it was a "fair exchange" in return for their rejecting what the majority wanted. The majority never did want this war, never supported it, and pacifists went to prison because they had no other choice.

To apply this theory of "political community" to the exile community is to apply it, for example, to veterans who served in Vietnam and had honored "the political community" until they could no longer stomach it. They had killed for it, often been wounded for it, and finally in desperation to avoid further guilt and killing they deserted. What more do these men owe the "political comunity?"

Or take the case of a man of 18 or 19, terrified of going to prison, deeply opposed to going into the army, who finally chooses exile in Canada. To which "political community" does he owe a duty? His immediate family? His church? His town? Those communities are real, he has been a part of them. Most of the young men who fled to Canada had been responsible to those immediate communities. They weren't drug addicts, high school drop outs or car thieves. They had been loyal to their real communities of family and friends. But suddenly this wider and more distant "political community," headed by Kennedy or Johnson or Nixon, sent them draft notices. Mysterious draft notices that could send them

to fight an unknown people ten thousand miles away—a people about whom they knew almost nothing. And so these youth fled to Canada.

I am a little impatient with intellectuals whose own opposition to the war was moderate and legal—who let the slaughter in Vietnam go on with only an occasional verbal dissent, who now demand of an 18 year old man, often with little political background, the maturity to see in the regimes of Kennedy, Johnson and Nixon some "political community" to which they owed a prison term of up to five years if they refused military service in an illegal war. A White House exposed by the Pentagon Papers and the Watergate Affair simply cannot lay claim to representing the moral and democratic consensus of the American people.

OTHER PROBLEMS

Veterans

Amnesty cannot be considered apart from other war-related questions, other problems with which we must deal if we are to heal and reconcile our nation. One of these is the treatment of American veterans, who are as much victims of the war as those in exile. Nixon, while making heroes of the 566 POW's who were captured while bombing North Vietnam, has also been trying to balance the budget by cutting veterans benefits. The American veterans are men who lost two or more years out of their lives in a dangerous and demoralizing war. Those who found legal ways to avoid military service not only didn't take those risks—they are "two years ahead" in their careers. Men who were drafted served at low pay, and must now begin again the building of their lives. They should have a full G.I. Bill of Rights with full medical coverage, a chance to attend college at government expense, and job training where needed. It is hardly enough for Nixon to "ask" employers to hire veterans. If necessary, the government should generate employment. Corporations made huge profits on defense contracts these past ten years—they should now be willing to pay out enough in taxes to ensure proper treatment for American veterans.

Civilian Prisoners in Saigon

At a conservative estimate Saigon holds 200,000 *civilian* political prisoners, including men, women, and *children*. Americans were deeply shocked when some of our returning POW's told of their torture in North Vietnam. I do not doubt some of their stories are true, even though the POW's admit the torture ended in 1969, or that it happened to only some of the 566 POW's, or that the POW's were volunteer military officers on well-paid bombing missions. None of this changes the sense of pain and dismay one feels at these reports. How much more terrible, then, to know that similar tortures—and some of them a great deal more horrible—are taking place *now* in the prisons of South Vietnam, prisons built and maintained by our tax money; and that such torture is happening not to a handful of military officers but to 200,000 civilian prisoners? We do not ask only for

amnesty here, but urge the government to withdraw all economic support from the Thieu dictatorship because it has violated the Paris Agreements by holding these men and women and subjecting them to torture.

War Orphans

The sense of healing must reach out beyond our boundaries to the damage the war has brought to Indochina. It is estimated there are tens of thousands of children in Vietnam today whose fathers were in the American military. These are what the French Occupation Army once called "the bastards of war." They have no place or standing in Vietnamese society. Their fathers have returned home. In many cases their mothers have abandoned them. When the French left Indochina in 1954 they recognized their moral responsibility to the children their troops had fathered. They brought these children to France, gave them French citizenship, and made a place for them in French society. Can we do less now? Do we not have a duty to adopt these children as our own, as American citizens?

And if there are Vietnamese who feel their lives may be in danger because they had supported the American army in Vietnam, doesn't it make more sense to open our doors to them than to talk about a possible "blood bath"—as Nixon does—but take no steps to avoid it?

An Appeal to Veterans of Vietnam

Those of you who served in Vietnam can speak most forcefully for amnesty. You, not Richard Nixon or Spiro Agnew, lived through the war. Some of your friends died in it. You may deeply disagree with the men who resisted—but I think you, and you alone, can disagree without bitterness, knowing better than the rest of us some of the reasons why some men deserted and some didn't. You know that some of your friends from school died in Vietnam; some went to prison for resisting the war; some went into exile; some deserted; some got less than honorable discharges. These men —all of them—were friends of yours.

God knows, this country has had enough of the war and the bitterness of the war. Your voice will be heard when others will not be heard. I ask you to help close this painful chapter in our history by speaking out in your communities for the men of your own age who chose the path of resistance.

An Appeal to the American People

As this pamphlet makes clear, I think the Vietnam War to have been a violation of law, an exercise in illegitimate power. We are not, however, calling for the punishment of individuals but for a change of our system. We are asking that the nation recognize the harm we have done both here and in Indochina and reach out to heal that damage. We are asking that our political system be reformed so that no President can take us into war without the consent of the Congress and without *fully* informing the people.

One point where we can begin to change our nation is to see that there was power and honor in the resistance. In

the decades to come we shall look back to this period and realize that the men and women who resisted helped shorten the war. They helped give us back a sense of our humanity by showing us how inhumane our Vietnam policy was. We should remember with pride the Catholic priests and nuns who were jailed; the military men serving time in brigs for resisting; those like Ellsberg and Russo who risked prison terms to get the Pentagon Papers to us; the thousands of young men whose names we shall never know who served terms in federal prisons for resisting this war. And those who, young and inexperienced, who may not have known how to stop the war, but at least had the integrity to say NO to a degrading situation.

Through this resistance they helped keep alive the American conscience. Because of these men and women the world realized America was more than a brutal giant raining death on peasants. They saw it also could struggle with itself and find its soul. Let no politican seek to make us proud of the evil we have done as a nation to the Indochinese. And let no politician seek to make us ashamed of the integrity of those of our youth who took the chances of dissent and exile. Amnesty is one step on American's long way home.

Action for Amnesty

A variety of committees are working on amnesty now. You can find out what is happening by writing the WRL and sending $1 for the Amnesty Packet.

Beyond that, you can prepare to take part in local and national actions that will dramatize the problem. After World War II small groups, costumed in old-style, striped prison garb, picketed the White House to appeal for release of those still held in prison after the war's end. This time there will be dozens, hundreds, thousands of us to stand beside the men we want to bring back into American society, whether they resisted in prison, in exile, or by desertion.

But these actions will follow education. Education in churches, in students groups, in veterans and trade union organizations. Hopefully this pamphlet will be helpful to you in that work.

DAVID MCREYNOLDS
WRL *Staff*

June 1973

In addition to this pamphlet the War Resisters League carries the following materials:

Amnesty Packet. An effective collection of materials, resolutions by various organizations, lists of books, audio-visual aids, action suggestions. $1

WRL Amnesty Statement. $1/100; single copies free.

The New Exiles. by Roger Neville Williams. An account of Americans who have become contemporary political refugees in Canada. 401 pp. $2.95

They Love It But Leave It. by Devi Prasad. Covers all major aspects of desertion by U.S. servicemen and their situation in the countries where they have taken refuge. 80 pp. $1

When Can I Come Home? by Murray Polner. A debate on amnesty for exiles and all other war prisoners. 267 pp. $1.95

For additional information and help, contact:

National Committee for Universal and Unconditional Amnesty
339 Lafayette Street, New York 10012

This is a broad coalition which includes some of the following:

American Friends Service Committee (Quakers)
160 North 15th Street, Philadelphia PA 19102

Amex-Canada
PO Box 187, Station D, Toronto, Ontario, Canada

Amnesty Project, ACLU Foundation
22 East 40th Street, New York 10016

Clergy and Laity Concerned
235 East 49th Street, New York 10017

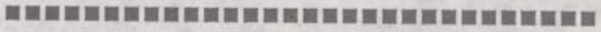
CCCO-Repatriation Project
2016 Walnut Street, Philadelphia PA 19103

Emergency Ministries Concerning the War
475 Riverside Drive, Room 767, New York 10027

National Interreligious Service Bd. for Conscientious Objectors
15th and New York Avenue, N.W., Washington DC 20005

Peacemakers
10208 Sylvan Avenue, Cincinnati OH 45241

Women Strike for Peace
1363 Pine Court, East Meadow NY 11554



WAR RESISTERS LEAGUE

339 Lafayette Street, New York 10012

Regional Offices

WRL-West 833 Haight Street, San Francisco CA 94117
WRL-Southwest 116B Hermosa S.E., Albuquerque NM 87108
Atlanta Workshop in Nonviolence Box 7477, Atlanta GA 30309
Plains States WRL, 306 West 39 Street, Kansas City MO 64111

Local WRL Groups

Santa Rosa WRL Box 1379, Rohnert Park CA 94928
Sacramento WRL 4840 Willowbrook Dr., Sacramento CA 49017

Washington DC WRL
Box 231, American University, Washington DC 20016

Catholic Action/Honolulu WRL
1212 University Avenue, Honolulu HA 96814

Ames WRL
c/o Kitzman, Meadow Glen Road, Rt. 4, Ames IA 50010

Oakland WRL Oakland University, Rochester MI 48063
Detroit WRL 692 North Forrest, Detroit MI 48201
Lansing WRL Box 264, Lansing MI 48902
Kellogg Community College WRL
450 North Avenue, Battle Creek MI 49017
Grand Rapids WRL Box 1114, Grand Rapids MI 49501

Jersey Shore WRL
364 Westwood Avenue, Apt. 80, Long Branch NJ 07740

Grope/WRL 244-F, R.D. 1, Kerkonkson NY 12466
Jamestown WRL 12 Partridge Street, Jamestown NY 14701
Broome County WRL Box 1351, Binghampton NY 13902
Ithaca WRL c/o Snyder, 66 Hilltop Road, Danby NY 14850

Columbus WRL 1954 Indianola Avenue, Columbus OH 43201
Dayton WRL 122 Blackberry Road, Dayton OH 45431

Oklahoma WRL Box H, Norman OK 73069

Ft. Worth WRL Box 11073, Ft. Worth TX 76109
Denton WRL, Box 13765, Denton TX 76203
Direct Action/Austin WRL
Box 7161, University Station, Austin TX 78712

Seattle WRL 2713 NE 94 Street, Seattle WN 98115

AMNESTY INFORMATION SERVICE, NATIONAL INTERRELIGIOUS SERVICE BOARD FOR CONSCIENTIOUS OBJECTORS

QUESTIONS AND ANSWERS ON AMNESTY

What is amnesty?

The word "amnesty" is derived from a Greek word that means not remembering, or an intentional overlooking. It is the same root word as that for "amnesia".

Amnesty is a discretionary act by a sovereign to decide that a class of offenders will be ignored. Amnesties usually apply to political offenders or alleged political offenders after the situation that provoked their acts has changed. The purpose of an amnesty is to make possible the larger goals of a society as it looks forward to a future without recriminations.

It should be made clear that amnesty does not mean forgiveness. War resisters feel that they did not do wrong, that their conscientious actions in opposing the war in Indochina, while illegal, were not immoral and do not need forgiveness.

What is the difference between amnesty and pardon?

A pardon generally applies to a single offender who has already been judged guilty. It implies forgiveness rather than forgetting. Along with clemency, the act of pardon presupposes that no further purpose would be served by continuing punishment already started or completed.

Amnesty does not consider guilt or innocence, but on behalf of society, the government clears the record for an entire group of people. It is in the eyes of the law as if the alleged offense had never happened.

Who has the authority to grant an amnesty?

The Constitution gives the Executive the "power to grant reprieves and pardons for offenses against the United States. . . " It has been held by the Supreme Court that this power also includes amnesties. (*U.S. v. Klein 1872*).

In the history of the United States, amnesties have been granted by the President alone, by the President with the authorization of Congress, and by Congress alone.

What does amnesty mean in terms of legal and political rights?

Amnesty normally involves the total restoration of all legal and political rights and the clearing of any criminal record that the individual might have for the acts amnestied. These who have been convicted would have their records expunged, those in prison would be released, those who face possible prosecution would be immune from that prosecution. Persons now unable to return to the United States could then return, those who cannot vote, hold public office, or even obtain professional licenses in most states, would have restoration of their civil and political rights.

Who would benefit from amnesty?

The proposal that NISBCO has associated itself with was outlined by the interreligious Conference on Amnesty, held in March, 1972. That statement called for amnesty for all persons in this country or in exile who have suffered or who face criminal or administrative penalties for opposing the war in Indochina, including: draft violators, deserters, veterans with other than honorable discharges, and those persons convicted of or prosecuted for civilian acts against the war.

Lesser amnesties have been proposed: some would include only draft violators. and others would require a period of alternate service as a condition for amnesty,

How many people would a universal, unconditional amnesty affect?

NISBCO's estimate, based on government figures, is that at least 400,000 people suffer some legal disability because of the war. An additional, unknown number live "underground" in either the United States or Canada. These people may or may not have actually been indicted for an offense, but assume that they will be prosecuted if they live openly in the United States.

A sizeable portion of America's young generation would be affected by amnesty—a portion of American society that has much to offer to the rest of the society if given the opportunity.

Wouldn't such a large amnesty be unprecedented?

After the War Between the States, the entire Confederacy was eventually amnestied. With the exception of that war, no other conflict in our history has been as divisive or produced as many acts of protest as the Indochina War. No war has lasted so long. After the relatively short involvement in World War I, little

effort was made to prosecute the estimated 300,000 draft violators at large, a much larger group in proportion to the total force than at present. The unprecedented circumstances surrounding this war justify an unprecedentedly large and generous amnesty.

Is there any historical precedent for amnesty in the United States?

According to testimony before a Congressional subcommittee last year, there have been thirty-seven instances of amnesty in the history of the United States.

The first was in 1795 when President George Washington granted amnesty to the Whiskey Insurrectionists, and the latest being President Truman's Amnesty Board following World War II (although that Board granted only pardons, and only to a small percentage of the men affected).

The most sweeping amnesty in our history came in 1868, when President Andrew Johnson granted an unconditional amnesty to all rebels of the Confederate States, except for certain political and military leaders.

Do all war resisters want amnesty?

There are many war resisters who are very emphatic about their political, moral and human right to an amnesty for their single offense of refusing to participate in the Indochina War.

Considering those in exile, what is at ultimately at stake in amnesty is not the intent of these people to return to the United States, what is at stake is their *right* to return. If some choose to live elsewhere, it in no way diminishes the need for America to enact a broad and general amnesty. Certainly, many would take advantage of an opportunity to visit their families, especially at times of sickness or death.

Shouldn't there be a distinction between draft violators and deserters?

The essential difference between a person who evaded the draft and one who left the military after being inducted is one of timing. Many young men did not realize the full impact and meaning of war until they were in the Army—often in Vietnam or at the point of being sent there. This first hand observation then brought them to conscientiously refuse to participate further, and often to desert.

The Supreme Court recognized in its *Welsh* decision (1970) that at the time of registration with Selective Service, a person may not have convictions against war, but that these views can develop in later years.

It must also be taken into account that many deserters are from poorer families, from minority groups—who did not have the educational opportunities and lacked the middle-class techniques for getting around the draft (e.g. draft counseling, letters from a doctor or psychiatrist, college deferments, etc.) To refuse them amnesty would only compound the injustices that the racism and inequities of the Selected Service System have already created.

Why didn't these men seek conscientious objector status?

Many men who would now benefit from amnesty did seek conscientious objector status and were denied their claims. Through most of the war, local draft boards rejected claims without giving reasons. In most court cases, therefore, it was not possible to defend the case on the merits of the claim, only on whether or not the draftee did or did not submit to induction.

Many others decided against applying, either because they thought it hopeless, or because they would not submit to the harassments of the draft or military system. Many were opposed to the war in Indochina, but supposed that they would serve in a legally declared conflict which conformed to international law and to the teachings of their church about the limits of war. Absolutely no provisions has been made in the United States for these "selective objectors". Others were opposed to any cooperation with conscription because of their religious scruples or conservative libertarian principles. These men and women frequently were imprisoned.

The poor and uneducated did not have the knowledge of the provisions about CO status (it was not until 1971 that Selective Service began publishing information about this legal right), nor did they have access to assistance in obtaining these rights. Much false information was in circulation about requirements for CO status. Others refused to accept CO status for themselves to protest the system that made it unattainable for so many deserving peple.

Shouldn't amnesty at least include a requirement for some type of alternate service?

Imposing conditions for amnesty implies guilt on the part of those who are amnestied and limits the point of an amnesty. To require service as retribution

is a perversion of both the meaning of service and the purpose of amnesty. Many persons have already suffered the pains of prison and the loneliness and difficulties of living underground or in exile. No further punishment would be useful. Many war resisters would not accept a conditional amnesty because of this punitive nature. They feel that in obeying a higher moral law they did nothing that deserves punishment.

Secondly, forced service for allegedly constructive social programs is neither constructive for the person concerned nor likely to be beneficial to the recipient of the service. Many conscientious objectors have chosen jail rather than accepting the sorts of service opportunities to which they were ordered.

Conditional amnesty also implies that the war resisters enjoyed an unfair personal advantage which must be compensated for. These people, however, have already suffered the hardships of prison or exile, hardships that could hardly be construed as an advantage requiring several years of their lives in some "service".

Wouldn't giving amnesty to those who refused to serve their country be an insult to those who have served?

According to a national poll taken in May of 1972, 73% of Americans favored withdrawal from Vietnam, yet the war went on. In such a situation, what really is service to the country?

A returned Vietnam veteran said in a letter to a Richmond, Virginia newspaper: "It is not the deserters and draft dodgers who shirked their responsibility, but those of us who failed to question what we were doing."

Many felt that their conscience required them to answer the call of the government to serve in the military. Other men saw refusal to participate in the military as true service to their country. All have suffered the consequences of their actions. Amnesty would not be an insult because it makes no moral judgement. It is simply another way the government can "bind up the wounds" created by the Indochina War.

Didn't each man who evaded the draft cause another man to be inducted in his place?

The Selective Service System has never been fair. There are millions of men who evaded military service by way of student, occupational, parental or physical deferments. It would not be practical or desireable to prosecute only those who evaded the draft by "legal" means, neither is it just to prosecute only those who in many cases did not have the opportunity for a "legal" escape and had to choose an "illegal" one. The men whose beliefs led them to refuse to serve in the military had no more to do with another person's being drafted than did the men who stayed in college to avoid serving.

What do you say to the families of those who suffered and died in the war?

For those families, as for all of us, it was a terrible tragedy that men suffered and died in the war; they have our total sympathy and compassion. But to punish those who refused to fight will not bring back their sons whole, nor restore them to life. Losing one's son does not justify denying the return of other sons. Why some were killed or injured is a question that should not be addressed to those who objected to the war or to those who advocate amnesty. That question is properly addressed to the government of the United States, which has for a decade been unable to give a satisfactory answer.

All of America's youth were victims of a government policy—a policy over which they had no control. Some were killed, some wounded, some imprisoned and some exiled—but all were victims and none should be punished for their victimization.

Wouldn't amnesty injure military discipline and make it difficult to recruit an army in the future?

There is no serious danger—after previous amnesties there has been no diminished ability for the military to recruit or to maintain discipline. At the present time, the achievement of an all-volunteer army seems likely and talk of an amnesty has no effect on it. An amnesty at this time might even enhance recruitment possibilities were potential enlistees to be assured that henceforth wars would not be entered into without a clear declaration by Congress, and a consensus of the people that the conflict is necessary.

What about respect for the law? Wouldn't amnesty encourage anarchy?

Amnesty itself is a lawful concept, and serves the law by restoring public confidence in the justice of law. Amnesty is for a specific group of people in a

specific situation—that of a war now said to be over. There is no evidence in history that an amnesty for those affected by a specific experience will have any other long-range effect.

Is there a time limit for amnesty?

There is no time limit to amnesties. President McKinley declared the last of the amnesties for the Confederacy, and President Franklin Roosevelt completed the amnesties for World War I. The longer an amnesty is delayed, however, the less relevant it will be.

NATIONAL INTERRELIGIOUS SERVICE BOARD FOR CONSCIENTIOUS OBJECTORS—AMNESTY INFORMATION SERVICE

A LIST OF AMNESTIES IN AMERICAN HISTORY, 1795 TO DATE

In this table amnesty is broadly defined to permit inclusion of several actions by the Executive that should properly be considered "pardons" as well as legislative actions by Congress.

The amnesties in American history, including date, issued by, persons affected and nature of action:

July 10, 1795, Washington, Whiskey insurrectionists (several hundred). General pardon to all who agreed to thereafter obey the law.

May 21, 1800, Adams, Pennsylvania insurrectionists. Prosecution of participants ended. Pardon not extended in those indicted or convicted.

October 15, 1807, Jefferson, Deserters given full pardon if they surrendered within 4 months.

February 7, 1812, October 8, 1812, July 14, 1814, Madison, Deserters—3 proclamations. Given full pardon if they surrendered within 4 months.

February 6, 1815, Madison, Pirates who fought in War of 1812 pardoned of all previous acts of piracy for which any suits, indictments or prosecutions were initiated.

June 12, 1830, Jackson (War Department), Deserters, with provisions: (1) those in confinement returned to duty; (2) those at large under sentence of death discharged, never again to be enlisted.

February 14, 1862, Lincoln (War Department), Political prisoners paroled.

July 17, 1862 (Confiscation Act) Congress, President authorized to extend pardon and amnesty to rebels.

March 10, 1863, Lincoln, Deserters restored to regiments without punishment, except forfeiture of pay during absence.

December 8, 1863, Lincoln, Full pardon to all implicated in or participating in the "existing rebellion" with exceptions and subject to oath.

February 26, 1864, Lincoln (War Department), Deserters' sentences mitigated, some restored to duty.

March 26, 1864, Lincoln, Certain rebels (clarification of Dec. 8, 1863, proclamation).

March 3, 1865, Congress, Desertion punished by forfeiture of citizenship, President to pardon all who return within 60 days.

March 11, 1865, Lincoln, Deserters who returned to post in 60 days as required by Congress.

May 29, 1865, Johnson, Certain rebels of Confederate States (qualified).

July 3, 1866, Johnson (War Department), Deserters returned to duty without punishment except forfeiture of pay.

January 21, 1867, Congress, Section 13 of Confiscation Act (authority of President to grant pardon and amnesty) repealed.

September 7, 1867, Johnson, Rebels—additional amnesty including all but certain officers of the Confederacy on condition of an oath.

July 4, 1868, Johnson, Full pardon to all participants in "the late rebellion" except those indicted for treason or felony.

December 25, 1868, Johnson, All rebels of Confederate States (universal and unconditional).

May 23, 1872, Congress, General amnesty law reenfranchised many thousands of former rebels.

May 24, 1884, Congress, Lifted restrictions on former rebels to allow jury duty and civil office.

January 4, 1893, Harrison, Mormons—liability for polygamy amnestied.

September 25, 1894, Cleveland, Mormons—in accord with above.

March 1896, Congress, Lifted restrictions on former rebels to allow appointment to military commissions.

June 8, 1898, Congress, Universal Amnesty Act removed all disabilities against all former rebels.

July 4, 1902, T. Roosevelt, Philippine insurrectionists. Full pardon and amnesty to all who took an oath recognizing "the supreme authority of the United States of America in the Philippine Islands."

June 14, 1917, Wilson, 5,000 persons under suspended sentence because of change in law (not war related).

August 21, 1917, Wilson, Clarification of June 14, 1917 proclamation.

March 5, 1924, Coolidge, More than 100 deserters—as to loss of citizenship for those deserting since World War I armistice.

December 23, 1933, F. Roosevelt, 1,500 convicted of having violated espionage or draft laws (World War I) who have completed their sentences.

December 24, 1945, Truman, Several thousand ex-convicts who had served in World War II for at least 1 year.

December 23, 1947, Truman, 1,523 Individual pardons for draft evasion in World War II, based on recommendations of President's Amnesty Board.

December 24, 1952, Truman, Ex-convicts who served in Armed Forces not less than 1 year after June 25, 1950.

December 24, 1952, Truman, All persons convicted for having deserted between Aug. 18, 1945, and June 25, 1950.

Sources: John C. Etridge, Foreign Affairs Analyst, Foreign Affairs Division, Library of Congress.

WASHINGTON REPORT ON AMNESTY

At his press conference on January 30th, President Nixon made perfectly clear his personal views on amnesty for draft violators and military deserters. "Now, amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps, or something like that, as some have suggested. The price is a criminal penalty for disobeying the laws of the United States. If they want to return to the United States they must pay the penalty. If they don't want to return, they are certainly welcome to stay in any country that welcomes them."

The harsh words of the President were so offensive to many of his own supporters, that within a week White House spokesmen were trying to soften his statement. Charles Colson, counsel to the President, said in a lecture to students at Brown University, that the President wanted to follow the precedent of Lincoln, Andrew Johnson and other Presidents during postwar periods. "Those who deserted either served in prison or did some form of alternate service on the basis of individual judgements of those who decided to come back. Mitigating circumstances based upon certain hardship cases will be a factor in making those kinds of judgements."

Shortly following Colson's remarks were hints of a change in the President's views on the treatment of draft violators. Senate Republican Leader Hugh Scott said, "I'd be willing to consider letting them give some kind of equivalent service after passions have cooled off for a while." Attorney General Richard Kleindienst in a speech in Washington mentioned the possibility of a "lesser penalty" for draft violators than the one advocated by President Nixon in his news conference.

Legislative Proposals

Several bills have been proposed in Congress dealing with amnesty for war objectors. While the Senate is currently dealing with other important matters, members of the House of Representatives have introduced several bills with different objectives on the treatment of draft violators and military deserters.

Perhaps the most important of these proposals are the bills introduced by Rep. Abzug (H.R. 236) and Rep. Dellums (H.R. 3100). The identical bills would enact the "War Resisters Exoneration Act of 1973". In brief, the Act would restore all civil, political, property and other rights to all persons who have been prosecuted, or who may be prosecuted for failing to comply with any requirement of, or relating to, service in the armed forces during the U.S. involvement in Indochina, or for engaging in any nonviolent activity, or activity justified by deeply held moral or ethical belief in protest of, or opposition to the Indochina war.

The general and unconditional amnesty this Act proposes would also immunize resisters from criminal prosecution for such violations, would expunge all notation from the records of courts and law enforcement agencies, would require the granting of honorable discharges to veterans who received less than honorable discharges because the discharge was based solely on the serviceman's objection to the war, and would nullify all other legal consequences of such violations.

A special Amnesty Commission would be set up to investigate cases where individuals who think they should be granted general unconditional amnesty are being denied it. The Commission would have the authority to grant general unconditional amnesty to such individuals. The Commission would expire at the end of four years.

Rep. Roybal has introduced a bill in which he calls for enactment of "The Amnesty Act of 1973" (H.R. 2167). This Act would encourage the President to "pardon" all Selective Service violators if they agreed to perform two years of military or civilian service in return. Excluded from this "pardon" would be persons who have obtained nationality or permanent residence status in another country. Persons in prison, or released from prison would also qualify for this "pardon" by completing at least one year of the service requirement.

Rep. Koch has introduced three bills, the first of which (H.R. 675) is very similar to Roybal's. His second bill (H.R. 674) is merely an approval and authorization for the President to amnesty or pardon "nonviolent military offenders" or persons who have violated Federal or State laws during the Vietnam War solely, or partly because of their disapproval of the U.S. involvement in the war.

Koch's third bill is the most interesting of them all (H.R. 2034). He proposes to amend the draft law in order to allow violators of the Selective Service law and violators of military law the opportunity to make claims of conscientious objection against a particular war (intending the Indochina War) so as to avoid prosecution, suspend prosecution, or to be released from prison while their claims for "selective conscientious objector" status are pending. Being granted such status would therefore exempt those persons from their military obligations retroactively. Koch's proposal avoids mentioning amnesty or pardon and makes no mention of persons who have served their time for violations of the military or Selective Service laws for the same "selective conscientious objection." All such claims would be handled by the existing local boards of the Selective Service System or the existing appeals structure currently being used for C.O. claims within the military services.

Biblical Materials & the Case for Amnesty

Prepared by Charles P. Lutz, Military-Draft Specialist, Lutheran Council in the USA, for the Interreligious Task Force on Amnesty

1. On the argument that the government's judgment must be followed

Lev. 25:55—In the final analysis, God's children are responsible to him, not to any earthly sovereign. This verse is a summary statement concluding the discussion of the Jubilee Year, "For it is to me that the children of Israel are servants. They are my servants . . ."

Acts 5:29—Peter and the apostles, after being imprisoned for defying particular authorities, said, "We must obey God rather than men." The conflict for Christians between this passage and Rom. 13:1 ("Be obedient to the governing authorities") has always been present. A third word to be considered is . . .

Rev. 13—describing the empire as a blasphemous beast: implicitly a warning against making the state into an absolute—Is the king God or is God the king?

2. On the argument that law must always exact its penalty

Lev. 25—Description of the Jubilee Year (every 50th), in which slaves and captives were to be released. "You shall . . . proclaim liberation in the land for all its inhabitants (25:10 NEB). While the Jubilee was part of the legal system, it also carries the idea of a suspension of the normal law system for the sake of a larger good.

Mt. 12:10–12 (also *Lk. 6:6–11*)—again, suspension of the normal system of law is justified: It is good to heal on the Sabbath, even thould that obviously violates the ban on Sabbath work, because the choice is whether "to save life or to destroy it" (Lk. 6:9).

3. SUPPORT FOR AMNESTY AS AN ELEMENT IN RECONCILIATION

Lev. 19:17–18—"You shall not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself: I am the Lord" (RSV).

Eph. 2:14–18—Christ is our peace. Through his death on a cross, he has broken down the enmity between those estranged (Gentiles and Jews). (Beware the temptation to press into service the "aliens in a foreign land" of v. 19, NEB.)

2 Cor. 5:18–19—"From first to last this has been the work of God. He has reconciled us men to himself through Christ, and he has enlisted us in this service of reconciliation. What I mean is, that God was in Christ reconciling the world to himself, no longer holding men's misdeeds against them, and that he has entrusted us with the message of reconciliation" (NEB). See also Rom. 5:10–11 and Col. 1:19–20.

To be avoided: the Prodigal Son parable (unless you *wish* to press the moral guilt/repentance/forgiveness theme).

The late Rabbi Abraham Heschel cited these additional materials from the Jewish tradition in his March 1972 presentation at the Interreligious Conference on Amnesty:

"Any man who ignores the command of a sovereign because he is concerned with (or engaged in) fulfilling God's command, even a slight one, is not liable (to punishment) because (when there is a conflict) between the edict of the Master and the edict of the servant (the sovereign), the former takes precedence over the latter. It goes without saying that if the king issues an order annulling a religious precept, no heed is paid to it." (*Laws Concerning Kings and Wars*, III.9)

"A man came to Rabba and said to him: 'The governor of my town has ordered me: "Go and kill so and so; if not, I will slay you." (What shall I do?).' Rabba answered him: 'Let him rather slay you than that you shall commit murder; who knows that your blood is redder? You have no right to murder him to save yourself: his life is not less valuable than your own. How could you say that your life is dearer to God than his? Maybe his life is dearer?' " (*Rashi, Pesahim 25A*—see Sanhedrin 74A)

NATIONAL INTERRELIGIOUS SERVICE BOARD FOR CONSCIENTIOUS OBJECTORS—AMNESTY INFORMATION SERVICE

RESOURCES FOR AMNESTY EDUCATION

Books

American Deserters in Sweden: The Men and Their Challenge, Thomas Lee Hayes (Association Press, New York, 1971).

The Amnesty of John David Herndon, James Reston, Jr. (McGraw-Hill, New York, 1973).

Amnesty? The Unsettled Question of Vietnam, Mark Hatfield, Arlie Schardt, William A. Rusher (Sun River Press, Two Continent Publishing Group; Lawrence, Massachusetts; 1973).

Home From the War, Vietnam Veterans Neither Victims Nor Executioners, Robert Jay Lifton (Simon and Schuster, New York, 1973).

I Would Like to Dodge the Draft-Dodgers But . . ., Frank H. Epp, ed. (Conrad Press, Waterloo and Winnipeg, 1970).

In the Service of Their Country: War Resisters in Prison, Willard Gaylin, MD (Grosset and Dunlop, New York, 1970).

The New Exiles: American War Resisters in Canada, Roger Nedville Williams (Liveright, New York, 1971).

The New Refugees: American Voices in Canada, Jim Christy, ed. (Peter Martin Associates, Toronto, 1972).

Selective Service and Amnesty, Senate Subcommittee on Administrative Practice and Procedure, Edward M. Kennedy, Chairman (Government Printing Office, Washington, 1972).

They Can't Go Home Again: The Story of America's Political Refugees, Richard L. Killmer, Robert S. Lecky, Debrah S. Wiley (Pilgrim Press, Philadelphia, 1971).[1]

They Love It But Leave It: American Deserters, Devi Prasad (War Resisters Internal, London, 1971).[1]

---

[1] Available from NISBCO.

War Resisters Canada, Kenneth Fred Emerick (Pennsylvania Free Press; Knox, Pennsylvania; 1972).[1]
We Won't Go, Alice Lynd (Beacon Press, Boston, 1968).
When Can I Come Home?, Murray Polner, ed. (Anchor Books, Doubleday and Company; Garden City, New York; 1972).
Words of Conscience: Religious Statements on Conscientious Objection, National Interreligious Service Board for Conscientious Objectors (NISBCO, Washington, 1973).[1]

Pamphlets, packets, leaflets, study guides (see organizations for addresses)

A Christian Declaration of Amnesty, Mennonite Central Committee, 21 South 12th Street, Akron PA 17501 (6 pages, free).
American Report Amnesty Supplement, Clergy and Laity Concerned (12 pages, 20¢).[1]
AMEX-Canada, magazine published by American exiles in Canada. 1 year subscription is $5.00. Packet of 6 pack issues for $3.00.
Amnesty: A peace Church Concern, study guide from the Mennonite Central Committee (11 pages, free).
Amnesty Education Packet, NISBCO ($1.00).[2]
Amnesty Group Discussion Guide, NISBCO (4 pages, 3½¢ in bulk orders).[2]
Amnesty in Perspective, A Study Document, American Lutheran Church Commission on Church and Society, 422 S Fifth Street, Minneapolis MN 55415 (6 pages, 6¢).
Amnesty News, Americans for Amnesty (8 pages, 20¢).
Amnesty Packet, Central Committee for Conscientious Objectors ($1.00).
Amnesty Packet, Indochina Program/American Friends Service Committee ($1.50).
Amnesty Packet, Fellowship of Reconciliation ($1.00).
Amnesty Packet, War Resisters League ($1.00).
Amnesty Packet, Women Strike for Peace Anti-Draft and Amnesty Clearinghouse
Amnesty Questions and Answers, Henry Schwarzschild, American Civil Liberties Union Project on Amnesty (7 pages, free).
Amnesty Report, newsletter of Families of Resisters for Amnesty and the Safe Return Amnesty Committee (available for a contribution).
Amnesty Study Guide and Leader's Manual. United Methodist Church Board of Church and Society, 100 Maryland Avenue, NE, Washington DC 20002 (30 pages, 50¢).
Amnesty, The Record and the Need, John M. Swomley, Jr., Clergy and Laity Concerned (10 pages, 20¢).[2]
Amnesty: Why? For Whom?, David McReynolds, War Resisters League (10 pages, 20¢).[1]
Biblical Materials and the Case for Amnesty, Charles P. Lutz, Lutheran Council in the U.S.A., 315 Park Avenue S, New York NY 10010 (2 pages, 1¢ in bulk).[2]
Facts on Other Than Honorable Discharges, American Veterans Committee, 1333 Connecticut Avenue, NW, Washington DC 20036 (12 pages, 35¢).[1]
Issues in the Debate on Amnesty, George A. Chauncey, General Executive Board of Presbyterian Church U.S., 341 Ponce de Leon Avenue, NE, Atlanta GA 30308 (12 pages).
Keeping Mercy for Thousands . . . (Leviticus 19:17), study kit by Rabbi Balfour Brickner, Union of American Hebrew Congregations, 838 Fifth Avenue, New York NY 10021 (26 pages, $1.00).
One Nation Indivisible: The Legal and Historical Case for Amnesty, Harrop Freeman, Fellowship of Reconciliation (11 pages, 10¢).[2]
Position Paper on Amnesty, Vietnam Veterans Against the War/Winter Soldier Organization (12 pages).
Questions and Answers on Amnesty, NISBCO (4 pages, 2¢ in bulk orders).[2]
Religious Statements on Amnesty, compiled by NISBCO (30 pages, 20¢).[2]
Repatriation Project, Central Committee for Conscientious Objectors. (16 pages, free).
The Truth About Deserters, reprint from "The Nation", CCCO. (10 pages, 15¢).
Utilization Guide, Amnesty or Exile, discussion guide for use with the film "Amnesty or Exile". Broadcasting and Film Commission, National Council of Churches, 475 Riverside Drive, New York NY 10027 (2 pages).[2]
Who Would Get Amnesty? A Fact Sheet, with graphs, NISBCO (4 pages, 2½¢ in bulk).[2]

---

[1] Available from NISBCO.
[2] Included in NISBCO's Amnesty Education Packet.

Films and other audio-visual aids

AMNESTY OR EXILE. 35 minutes, black and white. A documentary on U.S. war resisters in Canada, designed to promote understanding about those who would benefit from an amnesty. Is useful for starting discussion. Broadcasting and Film Commission, National Council of Churches, 475 Riverside Drive, New York NY 10027. (Sale: $200, Rental: $25) Limited scheduling available though NISBCO for $10 rental plus return postage and insurance.[1]

PERSPECTIVES ON AMNESTY. 29 Minutes, color. To be used as a discussion starter, especially with groups which are neutral or unfavorable. The film does not take a position on amnesty—it presents ideas from both sides. Amnesty Project, UMHE–Milwaukee, 2211 E Kenwood Boulevard, Milwaukee WI 53211 (Sale: $195, Rental: $22).

A MATTER OF CONSCIENCE. 28 Minutes, color. The story of two war objectors—one gains a CO classification, the other moves to Canada. Useful as background information. Augsburg Films, 422 S Fifth Street, Minneapolis MN 55415 (Rental: $28).

TRIAL BY FIRE. 27 Minutes. The story of a combat pilot's refusal to bomb an "enemy" village—deals with obedience to conscience vs. obedience to authority. Paulist Productions, 17575 Pacific Coast Highway, Pacific Palisades CA 90272 (Rental: $17.95 color, $11.95 black and white).

WINTER SOLDIER FILMS. Several films available on U.S. policy and war crimes in Indochina. Vietnam Veterans Against the War/Winter Soldier Organization, 827 W Newport, Chicago Ill. 60657.

SLIDE SHOW ON AMNESTY. 20 minutes. One carrousel of slides and a reel-to-reel tape containing the script. A discussion starter which includes: America's "haven" tradition, the destructiveness of the Vietnam war, resistance to that war, and the reasons for an amnesty. Minnesota Clergy and Laity Concerned, 122 W Franklin, Minneapolis Minn. 55404 (Sale: $50).

*AMNESTY: IS IT A GOOD IDEA? 25 minute cassette tape. Charles P. Lutz, Lutheran Office of Selective Service Information, speaking on the case for amnesty based on the Lutheran "just war" tradition. Lutheran Council in the U.S.A., 315 Park Avenue S, New York NY 10010 (Sale: $3).[1]

Amnesty buttons

Available from:

American Civil Liberties Union Project on Amnesty.
Americans for Amnesty.
Central Committee for Conscientious Objectors.
Fellowship of Reconciliation.

Amnesty bumper strips

Available from:

Fellowship of Reconciliation.
Philadelphia Resistance, 106 S 13th Street, Philadelphia Pa. 19107.
Vietnam Veterans Against the War/Winter Soldier Organization.

Amnesty posters

Available from:

Clergy and Laity Concerned.
Fellowship of Reconciliation.
Vietnam Veterans Against the War/Winter Soldier Organization.

National amnesty organizations (Contact for information, suggestions, speakers)

Americans for Amnesty, 235 East 49th Street, New York NY 10017.
Amex-Canada, P.O. Box 189, Station P, Toronto, Ontario, Canada M5S 2S7.
Amnesty Information and Action Center, P.O. Box 179, Ann Arbor MI 48107.
Clergy and Laity Concerned, 235 East 49th Street, New York NY 10017.
Families of Resisters for Amnesty, 69 First Avenue, New York NY 10003.
Fellowship of Reconciliation, P.O. Box 271, Nyack NY 10960.
Indochina Program/American Friends Service Committee, 160 North 15tq Street, Philadelphia PA 19102.
National Committee for Amnesty Now, 200 Legal Center Building, Eugene OR 97401.

---

[1] Available from NISBCO.
[2] Included in NISBCO's Amnesty Education Packet.

[Note: Items marked with * are available from NISBCO. Items marked with ** are included in NISBCO's Amnesty Education Packet.]

National Council for Universal Unconditional Amnesty, 339 Lafayette Street, New York NY 10012.
National Interreligious Service Board for Conscientious Objectors, 550 Washington Building, 15th and New York Avenue, NW, Washington DC 20005.
Project on Amnesty/American Civil Liberties Union, 22 East 40th Street, New York NY 10016.
Repatriation Project/Central Committee for Conscientious Objectors, 2016 Walnut Street, Philadelphia PA 19103.
Safe Return Amnesty Committee, 156 Fifth Avenue, Suite 1003, New York NY 10010.
Southern Conference Educational Fund, 3210 West Broadway, Louisville KY 40211.
Special Ministries/Vietnam Generation, National Council of Churches, 475 Riverside Drive, New York NY 10027.
Vietnam Veterans Against the War/Winter Soldier Organization, 827 West Newport, Chicago IL 60757.
War Resisters League, 339 Lafayette Street, New York NY 10012.
Women Strike for Peace/Anti-Draft and Amnesty Clearinghouse, 1363 Pine Court, East Meadow NY 11554.

Further resources

Annotated Bibilography on amnesty, with update additions. A complete and comprehensive bibliography of amnesty materials. Available from the Amnesty Information and Action Center.
Copies of current amnesty legislation in Congress are available from NISBCO.
The Reporter for Conscience' Sake, NISBCO's monthly newsletter. Carries news of recent developments on amnesty in the religious community and in Washington. (Subscriptions are $2.50 per year.)

NEW CANAAN, CONN., *March 5, 1974.*

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington D.C.

I understand that your subcommittee is holding hearings this week on the several measures before you having to do with amnesty for draft aid immigrants and deserters and men with less than an honorable discharge due to the war in Southeast Asia. May I by this means register my hope that your subcommittee will vote in favor of general and unconditional amnesty in view of the fact that all of us, including Members of the Congress and Administration, share the guilt for which they alone are paying any legal penalty. Amnesty is not forgiveness, it is the means by which those who have power can if they will use it to bind up a nation's wounds.

EUGENE CARSON BLAKE,
Former General Secretary,
World Council of Churches.

BALTIMORE, MD., *March 4, 1974.*

STATEMENT FOR INCLUSION IN THE PRINTED RECORD OF THE HOUSE JUDICIARY COMMITTEE

HOUSE JUDICIARY COMMITTEE: A year after "Peace with honor" in Indochina let us count up the score. Over fifty thousand were killed, over fifty thousand are exiled in Canada, over one thousand are missing in action, over one thousand are wasting their lives in jail as political prisoners, their only crime, they would not serve in an immoral war. All of these men, our best and finest, are sorely needed by this Nation in its darkest hour.

I am very proud of my son who is in Canada for conscience' sake. It is ironic that he is a descendant of the first white child born in the State of Georgia September 17, 1733, a child of French Huguenot parents who came to America for conscience's sake.

All other Presidents have offered amnesty after shattering wars but this President is too small, so Congress must act to grant universal and unconditional

amnesty. Some of the wrongs can be righted. The fifty thousand dead are wasted but the fifty thousand living can be given an opportunity to come home and take their place to rebuild and reunite America.

Sincerely,

NELLE M. REILLY.

STATEMENT OF THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. IN SUPPORT OF AMNESTY, SUBMITTED BY CHARLES F. WILLS, DIRECTOR OF CHAPLAINCY SERVICES, NATIONAL MINISTRIES

Mr. Chairman, and Members of the Committee, I commend you for holding these hearings on the important matter of amnesty. It is my pleasure to bring before you the text of a resolution in support of amnesty which was adopted by the American Baptist Churches in annual convention in 1969. In keeping with this position, I would urge your early approval of legislation to provide amnesty "for all persons who are either in jail or outside the country due to their acts of conscience against the war in Vietnam and the Selective Service system." The statement follows:

"Just as we respect the convictions of those young men who have felt that it was their duty to comply with the draft laws of our country by entering military service, so we also respect those young men who, during recent years, have resisted the draft because of their sincere conviction that participation in the Vietnamese war would constitute a violation of their consciences. We deeply sympathize with the families of those young men who have died in the performance of their military duties and we sympathize with those young men and their families who have become alienated from their government through their protest against this war. We honor those men who have sacrificed their future by death on the battlefield and we respect those who have risked their future by conscientious acts of non-conformity. Therefore, consistent with our concept of freedom and conscience, and recognizing that many of our ancestors came to this country to avoid conscription in Europe, we call upon the President of the U.S. to grant amnesty upon the cessation of hostilities or upon the major reduction of American forces for all persons who are either in jail or outside the country due to their acts of conscience against the war in Vietnam and the Selective Service system."

JOINT WASHINGTON OFFICE FOR SOCIAL CONCERN,
Washington, D.C., March 5, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee No. 3, Committee on Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to submit to Subcommittee No. 3 of the House Committee on Judiciary the enclosed letter concerning the issue of amnesty.

We hope that this statement can be included in the Subcommittee's hearing records, along with the attached resolutions from our three parent organizations.

Sincerely,

ROBERT E. JONES, *Executive Director.*

Enclosure.

JOINT WASHINGTON OFFICE FOR SOCIAL CONCERN,
Washington, D.C., March 5, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee No. 3, Committee on Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I write as Executive Director of the Joint Washington Office for Social Concern, representing three ethical humanist and liberal religious organizations: the American Ethical Union whose national headquarters is in New York City, the American Humanist Association whose headquarters is in San Francisco, and the Unitarian Universalist Association whose continental headquarters is in Boston.

The American Ethical Union, the American Humanist Association and the Unitarian Universalist Association all wish to be recorded as endorsing a full and unconditional amnesty to all those who refused to enter or to continue military service during the years of United States' military involvement in Indochina.

We are presenting this joint statement because our religious persuasions are similar and we have nearly identical positions on the need for amnesty. All three groups take as their basic tenet a faith in freedom, stressing that in matters of religion the individual conscience must be sovereign. Therefore, we are churches or religious associations without a fixed religious creed or dogma, though our members have a broad consensus of belief with respect to the ethical and moral approach to social questions. We are not in the category of "peace" churches; rather our members hold a wide range of positions on the questions of participation in war, including the pacifist position but not excluding members who support the use of force when deemed necessary in international relations.

We believe that the best interests of the United States Government and the American people will be served by the granting of amnesty to those individuals who have been exiled or jailed by the unfortunate circumstances of the last few years, namely, the Indochina War.

Without making judgments as to the causes and the blame for American military involvement in Vietnam, Cambodia and Laos, we wish to make the point that over the course of the war in those countries, American public opinion made a drastic shift from strong support of our combat role, finally, to opposition to continued military participation. The signing of the Paris Peace Accords in January, 1973, and the vote in the Congress last summer, ending the Cambodia bombing, signalled this dramatic shift in opinion.

We must ask ourselves if the young men, who had the prescience and the courage to oppose this war before the great mass of the American public and the Congress came around to a position of opposition, are to be punished indefinitely for their "premature" opposition? Here, we speak of those who refused induction and went to jail or who went into exile rather than serve in what they deemed an immoral war.

It is proper for groups like ours, which are concerned with ethical and moral questions, to address the ethical and moral imperative in amnesty. The persons amnesty would touch directly were nourished in the American ideals of freedom of thought and action. Having made a personal moral and ethical decision, many of the draft resisters chose to follow their conscience in an affirmation of life rather than to acquiesce in what was felt to be a life-destroying and immoral situation. These were not overt acts of aggression or treason against the United States Government or its people, but rather, the exercise—by individuals—of freedom of thought and conscience; by reason of that thought and conscience actions whereby the individual could retain personal integrity. When the situation is such that a large number of directly involved persons are not obeying the law—in this case young men of draft age—then it does not necessarily follow that those persons are consciously conspiring to destroy the mechanisms behind that law. It may well be that the law or the system itself is to blame for forcing individuals to take a stand whereby they must break the law in an act of conscience. The end of the war has eased this personal dilemma for the young, but the question for those many dissaffected young men who resisted and are still in exile, or prison, remains. Amnesty is the single act with which government can set to rest this problem. Though amnesty is not a "right," it is a discretionary act of grace and reconciliation of the President or the Congress.

Our three groups call for an unconditional amnesty; that is, an act which is broad and plenary, applying to draft resisters, deserters, exiles, those serving or having served a jail sentence, and, in the case of the Unitarian Universalist Association, amnesty also for veterans with less than honorable discharges. For, whereas the *motives* for these various acts may embrace a spectrum of religious, moral, ideological, or personal reasons, the *circumstances* which impelled the act are the same—the Indochina War. Thus, all acts or failure to act that arose out of the war would not have normally occurred and should be included in the amnesty.

There are exceptions that might not be included under an amnesty; for example, war crimes covered by the precedents and principles laid down at the post-World War II Nuremburg and Japan Trials. Where there are findings of substantial injury to persons or property such as war atrocities inflicted on military or civilians, larceny, rape, etc., it would be proper to look to circumstances and responsibility of the individual person. But, we are speaking here of amnesty for those who did not perpetrate gross violation of human law or any aggravated offense against morality, but who, on the contrary, suffer because they rejected the brutalizing effects of the war and military service.

There are substantial precedents in this country regarding amnesty (even though we acknowledge there has never been a full, unconditional amnesty). In most cases it was granted after commission of open acts of violence or treason

against the government as after the Civil War. Legislative proposals offered in the Senate and the House which contain a work requirement are not amnesty and we do not find them acceptable. These bills are a means of punishing persons who decided that the war was morally wrong and that there was no security threat to this country, in many cases, long before political leadership made the same judgments. It would be unjust to continue to punish men whose consciences impelled them to think the unthinkable, that their country was engaged in an unjust war, before the majority had reached that conclusion. An important point to keep in mind is that, while people will continue to dispute the merits of the war and the blame for it, the burdens of the war will be the life-long inheritance for young people, and for the most part, they will bear the legal consequences.

Why must we persecute a select group of Americans while there are many others just as strongly opposed to the war who, but for the fact of their age or the luck of the lottery, were free of having to make the terrible choice of conscience or expedience? By granting amnesty; by dismissing the question of blame, this legal debris would be removed from the lives of the young so that all might begin the building of a better nation and society.

Another ramification of an act of amnesty would be that it would carry strong moral and symbolic meanings concerning the acts of all parties surrounding the Vietnam experience. It would move the country toward reconciliation. As the Congress or President, in granting amnesty, would do so from a position of strength, likewise the act would reflect a nation, strong and flexible enough to acknowledge its errors and yet large enough in spirit to contain compassion even in the wake of so much horror.

An act of amnesty would demonstrate that America—traditionally the refuge for political exiles and refugees from religious and political oppression—is still capable of a compassionate and communal moral act after the appalling experiences of the war. The healing and reconciliation and the nation's redirection toward peace with itself will be difficult enough without the continued divisive rhetoric and action of exclusion.

Sincerely,

ROBERT E. JONES, *Executive Director.*

P.S.—Attached are Resolutions of the American Ethical Union, the American Humanist Association, and the Unitarian Universalist Association, dealing with the matter of amnesty.

AMERICAN ETHICAL UNION

APPROVED RESOLUTION ON URGING AMNESTY NOW

Whereas we believe that it is time to do everything that would contribute to a healing in the Nation caused by our participation in warfare in Southeast Asia: Therefore, be it

Resolved, That the American Ethical Union urge the President of the United States, as well as the Congress, to provide, without further delay, full and unconditional amnesty to all those who refused to enter or to continue military service.

Passed at the RiverdaleYonkers Assembly April, 1973.

RESOLUTION ON AMNESTY ADOPTED BY REFERENDUM OF THE MEMBERSHIP OF THE AMERICAN HUMANIST ASSOCIATION

The longest and most controversial war in the history of our nation has come to an end. While all of us rejoice in the returning of the POWs, the nature of the War in Indochina, its origin and its goals, have caused a serious division among the American people and have left deep wounds which now must be healed. One of the great issues to be faced is the exile of a very large number of young men who refused to serve in the military because of conscientious objection to wars and violence. Some of these men based their objection on orthodox religion in the Christian-Judaic tradition, many more on a humanistic approach to life. This second category was denied their claim to a conscientious objector classification by local draft boards in the years up to late 1970 when the Welsh case was won. They had to choose between prison and exile in order to be true to their belief. These conscientious young people are the wave and hope for the future to guide us towards a World Without War and a True Peace.

Therefore we, the members of the American Humanist Association, declare that the time for recrimination should be ended. If we can make peace with our enemies

and can offer our efforts and assistance to rebuild the ravaged country of North Vietnam, certainly we can make peace with our own sons.

The American Humanist Association adopts the above resolution and asks the President and Congress to follow the generous tradition of American history in which amnesty was granted after every war including the Civil War and WWII. We are asking for unconditional amnesty now.

AMNESTY—GENERAL RESOLUTION ADOPTED BY THE 12TH GENERAL ASSEMBLY OF THE UNITARIAN UNIVERSALIST ASSOCIATION

Whereas hundreds of thousands of Americans have unjustly suffered a loss of civil rights, liberty and jobs because they have been in opposition to the Indochina War or to the racism and oppression of the American military and draft systems, and

Whereas, according to Canadian Department of Immigration statistics there are tens of thousands of anti-war exiles in Canada alone while, however, the majority of war resisters are inside the U.S., where an estimated 200,000 live underground, thousands behind bars, an over 500,000 veterans suffer from less than honorable discharges issued during the Indochina War era, and

Whereas any amnesty that separates for different treatment pre- and post-induction resisters (draft resisters and those who resisted or separated themselves from the military) fails to recognize that class and race factors more than anything else resulted in these distinctions and that such an amnesty would essentially discriminate against working-class and a disproportionate number of non-white resisters, those who have already been forced to bear the heaviest burdens of the war: Be it

Resolved, That the 1973 General Assembly of the Unitarian Universalist Association urges that the Congress of the United States enact a universal and unconditional amnesty (with no alternate service or other punitive measures, and to avoid unworkable, unjust case-by-case judgments) for:

1. All military resisters including so-called "deserters," and draft resisters in exile or underground in the U.S.;

2. All people who, because of their opposition to the Indochina War, have been arrested, have been or are now in civilian and military prisons, or for this reason are now being sought for prosecution—this includes a clearing of their records;

3. The more than half-million Vietnam era veterans who have been discharged from the military with less than honorable discharges who will suffer from permanent loss of civil rights, and discrimination in employment without an amnesty. The classification of military discharges as honorable or otherwise should be eliminated retroactively into one single category of discharge; be it further

Resolved, that the 1973 General Assembly of the Unitarian Universalist Association urges member societies of the Association to give specific attention to the issues involved in, and the means toward achieving a universal, unconditional amnesty by initiating discussion within each society, guided by materials to be developed by the Department of Education and Social Concern, and by members of these societies individually and collectively communicating, educating and organizing on this issue to the limits of their energies, time and commitment until such a time as a universal and unconditional amnesty is effected for all of those who have been, are being, or would be punished for their resistance.

By supporting complete amnesty, we do not mean to imply lack of recognition of the hardships, heartaches and suffereings of all other citizens who were affected by U.S. military involvement in Southeast Asia.

ROSLINDALE, MASS.,
February 27, 1974.

MR. WILLIAM DIXON,
Council, Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR SIR: It is respectfully requested that you inform the Chairman and members of the subcommittee considering the amnesty bills that have been introduced that I am for unconditional amnesty.

I am a retired volunteer naval reservist with over 30 years of creditable service and feel that before forcing these young men to choose whether to go to Vietnam and possibly become a murderer, drug addict, maimed for life or a corpse or whether to go to jail or into exile, reserve trained units should have been activated.

It is also requested that the enclosure—a summary of an address given by Indochina War Gold Star Mother Mrs. Kay Litchfield of 64 Beech Street Dedham Mass. be given the chairman and committee members for possible insertion in the Congressional Records.

Very truly yours,

RICHARD J. CASILLI.

The following is nearly the complete text of an address on amnesty given by Indochina Gold Star Mother, Mrs. Kay Litchfield, during a program for a lasting peace held in historic Faneuil Hall, Boston Mass. on August 16, 1973.

Most of our young American men who went to jail, into exile, or who became deserters, were under 12 years of age when we became involved—ten years ago—in the illegal and unpopular Indochina War. Not only did they have no part in electing the political leaders responsible for what has been rightfully termed "the biggest blunder in United States history" but they were deprived of their constitutional and God-given rights of Life, Liberty and the Pursuit of Happiness.

At 18 these boys, who were just reaching manhood, found themselves in the, unenviable position of being forced to fight in an American Foreign Legion taking sides in another country's civil war. They heard and read of the My Lais, the Pentagon Papers, the serious drug situation, the crooked elections, the Saigon tiger cages for political prisoners, the graft, corruption and frightening testimony of the Vietnam Veterans Against the War. The deceit and lies which were used to justify our presence in a tiny backward country that could never pose a threat to the most powerful nation on earth was an insult to their intelligence. They watched their fellow teen-agers returning from the war zone in flag-draped caskets or disabled for life; their sacrifices all but ignored by the vast majority of a pleasure-seeking American public, concerned only with their own selfish interests and world of materialism.

As the "endless" war dragged on, the horrible and bitter truth became quite evident—they were members of a minority group, and lacking a constituency that mattered to the White House, they were being used as "expendables" to maintain the "status quo" situation to keep a corrupt military dictator in power. These young men were unable to comprehend why it was only their young lives that were being disrupted, and even destroyed, while the only contribution the vast majority of their fellow-Americans were making towards the war effort was the 60¢ out of their every tax dollar that went to pay for it. Rightfully confused and frightened at this terrible injustice, they were desperately in need of understanding and guidance, but found most of us insensitive to their problem. By failing to provide these bewildered youngsters with sufficient and proper counseling—as well as discouraging them from seeking it out because of a blind sense of patriotism, ignorance, or concern about what other people might think—we, in effect, betrayed them. As a result of this betrayal, hundreds of thousands unfit for military service because of physical or mental disabilities, were inducted. Others were drafted even though they qualified for "Hardship" or "Conscientious Objector" status, or who were just plain psychologically unadaptable to service life. Is it any wonder then, since 1967 there have been over 354,000 desertions, hundreds of thousands courts-martial, bad conduct and less-than-honorable discharges—along with separations from the service "for the convenience of the government?" These, along with their families, are the forgotten casualties of this terrible conflict.

Truthfully, can we blame these young men for not wanting to be dehumanized and exposed to crimes of murder, rape, theft, etc., or to suffer permanent physical or mental disabilities—or even to die, in a "useless war?" How can those amongst us who fought in past wars even think of not granting amnesty? Our purpose for fighting was to make a better world for our children and to protect the very rights and freedoms that, paradoxically, we are now responsible for them losing.

Certainly, those of us who became panic-stricken when faced with induction but were able, through "contacts" or otherwise, to dodge the draft by obtaining billets in reserve units—should be sympathetic to our brothers less fortunate or who had the courage of their convictions. Those who have been indifferent to the war, those who have contributed nothing towards it, and those who have been unaffected by

it, should be moved—as a matter of conscience—to speak out for amnesty. Others among us who have profited from the war—materially or career-wise—have an opportunity to soothe our consciences somewhat, by taking a stand in favor of these young victims of this Great American Tragedy. Lastly—and probably most importantly—everyone in the religious life is morally obliged to put into practice the compassion and forgiveness which they preach and lead the fight to obtain amnesty, as partial restitution for the terrible injustice of our sons "paying for the sins of their fathers."

The intent of the draft law was to provide a strong military organization which would serve as a deterrent to an unprovoked attack on our country. The United States Government has violated its own laws by forcing these "draftees" to serve as "mercenaries" fighting "undeclared" wars throughout the world. It should be carefully noted that for political reasons and the fact that our national security was not being threatened, few trained reserve units were activated during this ten-year period. Our negligence in permitting the Executive branch of our government to usurp the constitutional war-making powers of the Congress has tragically affected the lives of too many American young men and their families. Unless this mistake is rectified, we will be haunted forever by the thought that this "Lost Generation" was the result of our own failures. The reunification of America, which has been polarized and torn apart by internal dissension, never will be accomplished if we continue carrying on a policy of vindictiveness and vengeance against these innocent unfortunates whose only crime was—they were born at the wrong time.

"Amnesty never", means "Divided forever". . . . . In the name of God, human decency and justice—and for the reunification and preservation of our country—we cannot afford to abandon them.

UNITARIAN UNIVERSALIST ASSOCIATION,
DEPARTMENT OF EDUCATION AND SOCIAL CONCERN,
Boston, Mass., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: Enclosed is the text of a resolution on "Amnesty" passed by the delegates to the General Assemby of the Unitarian Universalist Association of Churches and Fellowships in North America, convened in Toronto, Canada, June 1973.

Our constituents throughout the fifty states are vitally concerned about this issue. Sermons, forums, film showings and discussions, correspondence to this office, all reflect the growing amnesty movement.

We urge you to seriously read and consider this resolution as background material for the March 7–11 amnesty hearings.

Sincerely,

MARGARET E. WILLIAMS,
Social Action Clearing House.

TEXT OF A RESOLUTION ON AMNESTY PASSED AT THE 12TH GENERAL ASSEMBLY OF THE UNITARIAN UNIVERSALIST ASSOCIATION

Whereas hundreds of thousands of Americans have unjustly suffered a loss of civil rights, liberty and jobs because they have been in opposition to the Indochina War or to the racism oppression of the American military and draft systems and

Whereas according to Canadian Department of Immigration statistics there are tens of thousands of anti-war exiles in Canada alone, however, the majority of war resisters are inside the U.S., where an estimated 200,000 live underground, thousands behind bars, many with court records, and over 500,000 veterans suffer from less than honorable discharges issued during the Indochina War era and

Whereas any amnesty that separates for different treatment pre- and post-induction resisters (draft resisters and those who resisted or separated themselves from the military) fails to recognize that class and race factors more than anything else resulted in these distinctions and that such an amnesty would essentially discriminate against working-class and a disproportionate number of non-white resisters, those who have already been forced to bear the heaviest burdens of the war: Be it

Resolved, That the 1973 General Assembly of the Unitarian Universalist Association urges that the Congress of the United States enact a universal and unconditional amnesty (with no alternate service or other punitive measures, and to avoid unworkable, unjust case-by-case judgments) for:

1. All military resisters including so-called "deserters", and draft resisters in exile or underground in the U.S.,

2. All people who, because of their opposition to the Indochina War, have been arrested, have been or are now in civilian and military prisons, or for this reason are now being sought for prosecution—this includes a clearing of their records;

3. The more than half-million Vietnam era veterans who have been discharged from the military with less than honorable discharges who will suffer from permanent loss of civil rights, and discrimination unemployment without an amnesty. The classification of military discharges as honorable or otherwise should be eliminated retroactively into one single category of discharge; be it further

Resolved, That the UUA 1973 General Assembly urges member societies of the Association to give specific attention to the issues involved in, and the means toward achieving a universal, unconditional amnesty by initiating discussion within each society, guided by materials to be developed by the Department of Education and Social Concern, and by members of these societies individually and collectively communicating, educating and organizing on this issue to the limits of their energies, time and commitment until such time as a universal and unconditional amnesty is effected for all of those who have been, are being, or would be punished for their resistance.

By supporting complete amnesty, we do not mean to imply lack of recognition of the hardships, heartaches and sufferings of all other citizens who were affected by U.S. military involvement in Southeast Asia.

AMERICAN FRIENDS SERVICE COMMITTEE,
EL PASO-LAS CRUCES COMMITTEE,
El Paso, Tex. March 2, 1974.

Hon. ROBERT KASTENMEIER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: The attached statement is submitted to your subcommittee in connection with next week's hearings on amnesty.

I am a Vietnam veteran, and I feel that some discussion of the cowardice issue is in order. Please feel free to use any or all of this statement for whatever purpose you desire.

Sincerely,

HAMILTON GREGORY, *Chairman.*

STATEMENT OF HAMILTON GREGORY, CHAIRMAN OF THE AMERICAN FRIENDS SERVICE COMMITTEE IN EL PASO, TEX.

I am a Vietnam veteran, and I would like to speak to one aspect of the amnesty argument: did these men resist the draft because they sincerely believed the war was wrong or were simply acting out of cowardice.

The charge of cowardice, made frequently by opponents of amnesty, has always seemed ridiculous to me. If a man faced with induction had been a coward, he could have chosen from a number of options, all of them more pleasant than prison or exile:

1. He could have gotten a student deferment and stayed in school until age 26.

2. He could have signed up for a safe assignment in the National Guard or Reserves.

3. He could have declared himself a homosexual.

4. He could have shot off his big toe or cut off his trigger finger.

5. He could have gotten a medical deferment by going to a physician regularly in the months before induction with complaints of some mysterious, hard-to-diagnose ailment.

The resisters took a harder road. Some submitted to the brutality of prison life and the prospects of being ex-cons the rest of their lives. The exiles paid

a great price, too—leaving home, giving up work, going underground, drifting from place to place, wondering whether they had cut themselves off forever from family and friends.

Many Vietnam veterans such as myself have a great deal of respect for the men who resisted the war. If the clocks were turned back, many of us would follow their example—if we had the moral courage.

The resisters aren't the only ones who need amnesty. We all need it. We need to heal the wounds which the war has caused at home. A lively debate on amnesty was held recently at Temple Mt. Sinai in El Paso, Texas, between retired Army Colonel Landon Witt and Conscientious Objector Robert S. Vogel, who is Peace Education Secretary for the Pacific Southwest region of the American Friends Service Committee. At the end of the arguments, the moderator remarked that the debaters represented the polarization that exists in the U.S. today. Hearing this, Vogel walked over to the colonel, shook his hand and held it, and turned to the audience. "No, we are not polarized," he said. "Though we disagree, we are both Americans. And more important than that, we are both humans, we are both children of God."

This is the spirit of reconciliation that we need in American today. Granting amnesty would be the first step. It would pour out the balm of healing, and it would show that we are a generous and compassionate people.

HAMILTON GREGORY.

JEWISH PEACE FELLOWSHIP,
March 4, 1974.

Re Amnesty.

Hon. ROBERT W. KASTENMEIER,
Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. KASTENMEIER: I have the honor of submitting this statement on behalf of the Jewish Peace Fellowship (J.P.F.) for inclusion in the record of the hearings on amnesty being held by the Subcommittee on the Courts, Civil Liberties, and the Administration of Justice.

For two generations, the Jewish Peace Fellowship has been the chief organization in which American Jews from all sectors of the American Jewish community have gathered to work for peace and to support all peace-making efforts by individuals and institutions regardless of religious or ideological orientation. Its activities have been certified by rabbinical authorities, and indeed some of the most outstanding rabbis and moral leaders of Jewry, such as Albert Einstein, Martin Buber, and Leo Baeck, have been identified with the Jewish Peace Fellowship.

The Jewish Peace Fellowship urges the Congress to initiate prompt measures for universal and unconditional amnesty for all past, present, and possible civil and military charges arising out of and in connection with the military role of the United States in the war in Southeast Asia during the last decade or more, including refusal of induction, of military service, less-than-honorable discharges from the military, activities in support of refusals of military service, etc.

Such universal and unconditional amnesty, the J.P.F. submits, should be extended in order to bring peace (in the Hebrew called *shalom*, which literally means "wholeness") and the fullest possible productive life back into the fabric of American society and all of its individual members, so painfully rent by the political and moral antagonisms of the recent period, and in order to advance the cause of reconciliation and reconstruction among nations to which American policy is now officially committed. We now visit, welcome, and interact with foreign individuals and governments that had earlier been called "our sworn enemies"; can we do any less with tens of thousands of our own sons, among whom are some of the brightest, most sensitive, and most committed to social welfare, who made great, perhaps controvertible but certainly well intentioned, personal sacrifices precisely in order to convince their countrymen that this, and not war, is the proper course to follow?

In addition to the great American tradition of devotion to individual and social welfare, the Jewish Peace Fellowship has special reasons of its own, of a particularly Jewish character, to urge the Congress to act in this wise. Judaism and the Jewish people have, of course, worked and suffered greatly for millennia on behalf of

mutual understanding and human improvement. God is believed to be "He who makes peace," and His children are enjoined to imitate such behavior. Because of their loyalty to such values, Jews have often come into conflict with governments and men that strove for contrary values; they have been jailed, shunted aside, and forced into exile, and many American Jews first landed on these hospitable shores as religious, social, and military refugees from such conditions. The very thought of America now, for whatever considerations, imposing such a fate on many of its own children most be abhorrent in our own eyes and disgraceful, as well as counterproductive, in the minds of people abroad.

We believe, with you, that America and Americans still have an important role to play in making life better for all people, here, in the Near East, and around the globe. Toward this goal, we ought to put aside in the least painful manner the recriminations of the past, and to work with all our citizens of good will toward a more peaceful, just, and productive world. Amnesty must be an important component of this program.

Sincerely yours,

STEVEN S. SCHWARZSCHILD.

ANCHORAGE, ALASKA.

Representative ROBERT KASTENMEIER,
Rayburn House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: Please include the enclosed statement in the records of the upcoming hearings on amnesty, 7–8 March.

Thank you,

KIM MCGEE.

ANCHORAGE, ALASKA,
March 3, 1974.

MY BROTHERS AND SISTERS: I submit this statement to you in the hope that these hearings on amnesty will result in positive action.

At this time the people of our nation are apathetic and divided. People are turned away from the rest of humanity and are losing what moral consciousness that we may have once had. Our interest other than purely personal interest is faltering and people are closing their eyes and turning away rather than to recognize repulsive actions and refuse to accept them as the status quo. The people of the United States are becoming accustomed to being lied to! Some will even say that these lies are necessary and justifiable.

Amnesty is not needed to tell those exiled, underground or imprisoned that they are forgiven, they are not the ones to be forgiven. They do not need it. Those people did not commit crimes, unless thinking for themselves, having the courage to keep their own moral beliefs, refusing to kill their brothers and sisters and destroy a country are crimes. Is this nation so caught up in the obscene that it will go on considering these beautiful persons criminals. Amnesty would be a statement about ourselves. It would say that we will begin a new life for this nation, that we will not punish those that insist on living and promoting life rather than just exist and kill. That we will no longer perpetuate the same consciousness of hate in our country, hate is not the answer, that we will begin the change to a consciousness of love.

To begin this change we need the presence and the influence of those exiled, underground and imprisoned people to help form a better society. We must not give up on our citizens and let hate and oppression grow. We are not too far gone, we must seize the time and change our ways. With all the political crimes that have and are happening we need a universal and unconditional amnesty to start us moving towards a new life. We need it to move us to save our civil liberties, we need it to move us to save ourselves. If we turn our backs any longer we will be lost and we will have destroyed ourselves! Our people's moral consciousness is almost nonexistant now, we are turned around, let us welcome back those that can help us to a better life and society for our own good. They have not committed the crimes, we have. We need their forgiveness.

In sincerity and hope for the health of our country.

KIM MCGEE.

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES,
Washington, D.C., March 4, 1974.

Hon. ROBERT KASTENMEIER,
Chairman, Subcommittee No. 3, House Judiciary Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that you are conducting hearings on the subject of amnesty for draft dodgers and deserters.

Enclosed are copies of our Resolution No. 2 adopted by our National Council on 16 February 1973.

It is respectfully requested that this resolution be inserted in the record of your hearings.

Sincerely,

JOHN T. CARLTON,
Executive Director.

Enclosures

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

RESOLUTION NO. 2. REFUSAL OF A GENERAL AMNESTY FOR DRAFT DODGERS AND MILITARY DESERTERS

(This Resolution supersedes Resolution No. 2, 24 Feb. 1972)

Whereas there continues an effort by some individual citizens and newly organized groups to obtain a general amnesty for those American citizens, or former citizens who have shirked their duty, fleeing either to avoid induction into the United States Armed Forces, or deserting the Armed Forces and taking sanctuary in foreign countries, and

Whereas after a long and cruel war in which many thousands of our fellow countrymen gave their lives, many thousands more were wounded and millions served and survived, all in faithful and dutiful response to the call to service of their government in the continuing commitment to freedom and security, and

Whereas the President of the United States and many other citizens in public and private life have asserted that these draft dodgers and deserters must pay the legal penalty for refusing to serve their government and taking flight to evade the responsiblity which is every citizen's: Now, therefore, be it

Resolved, That the Reserve Officers Association of the United States reconfirm its stand against any general amnesty, support the Commander-in-Chief in his stated position and while praising those who have served during these past ten years and who are serving today, condemn the action of those who have failed their government which gives and preserves for all citizens their freedom.

Adopted by the National Council 16 February 1973.

Brig. Gen. ROBERT D. UPP, USAR,
National President.

Attest:

JOHN T. CARLTON,
Executive Director.

HARVARD UNIVERSITY,
THE DIVINITY SCHOOL,
Cambridge, Mass., March 3, 1974.

Hon. ROBERT KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Committee on the Judiciary, Rayburn Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: From over five years of involvement with the amnesty issue, I wish to present personal testimony on that vexing issue as it affects our victims of the war in Southeast Asia. I am now the Coordinator of Field Education in the Office of Ministerial Studies at the Harvard Divinity School. I have also been visiting lecturer at Andover Newton Theological Seminary this year, presenting a course on "Teaching about War, Peace and Conscience". I continue as a consultant to the United Presbyterian Church for whom I was for almost five years the Secretary for Conscience and War. During that time I was chairman of the Interfaith Committee on Draft and Military Information, the vice-chairman of the National Council of Church policy committee on Emergency Ministries Concerning the War, and member of the Boards and Committees of CCCO (founded in 1948 as the Central Committee for Con-

scientious Objectors), the National Interreligious Service Board for Conscientious Objectors, Prisoner Visitation and Support, and the United Presbyterian Peace Fellowship. I have talked with and counseled many war objectors, men and women in exile or prison, and an increasing number of veterans hurt by the war; I have researched the amnesty issue, written several articles, helped produce a film, and have spoken on TV, the radio and to countless local church and community groups. From the time I was lecturing in Australia in 1968 the amnesty issue has come to increasing prominence in my own activity and in the concerns of the people I have worked with. I believe that people are becoming ready to consider and perhaps even to accept amnesty as public policy.

There is an optimal time for consideration of a particular issue. We are now entering that period. Now that there are few draftees left in the army, the POWs are home, the all-volunteer armed force seems to be working for the moment, and it does not appear that we are hankering after solving disputes in other countries through the use of our troops, the technical and strategic considerations standing in the way of amnesty have been neutralized. Most religious groups have taken a stand at their highest deliberative level of some support for amnesty, and are in the long process of educating their constituencies on this issue. The divisive passions concerning the war are fading, though by no means absent, and the people are capable of turning their attention to the future which is what amnesty is really about.

The amnesties of other countries are an example for us: Australia proclaimed a full amnesty last year, even providing an option for those who were conscripts in the army to get out; Canada gave opportunity for those who had not complied with or qualified under Canadian immigration law to come forward and to regularize their presence under extremely generous conditions that amounted to a complete amnesty for all those illegal immigrants present at the specified time. Looking back in recent history, the French under DeGaulle provided amnesty for over a million persons involved in opposition to the government over the Algerian War. Here in the United States of America, we are entering a period of reappraisal of our policy, a reappraisal of the administration's opposition to amnesty which may now be seen for its political defensiveness, since the administration believes in "forgetting" where its interests are concerned, and there is a hope that with the bicentennial observance we might also have an amnesty which is traditional among nations as they celebrate their heritage of great anniversaries.

So far, the most striking thing about our handling of the amnesty issue has been its distortion; its definition has been misrepresented; the statistics have been manipulated; the press has exploited superficially the question for its quick news value and the government and the amnesty movement have appeared to use the issue and the persons involved for the purposes of their own policitcal vindication. Religious groups are at least as much to blame, and perhaps more deserving of criticism, for their failure to approach the amnesty question with sound theological, moral and educational instinct.

The meaning of "amnesty" has been diminished to a lesser category of pardon or clemency, as a result of the public debate. The proper meaning of amnesty is that it is an act of grace by the sovereign authority to eliminate from further consideration certain classes of offenses that are no longer in the interest of the society to continue to prosecute or punish. Most of the proposals for so called conditional amnesty are not amnesty at all but provisions for pardons or clemency provided by tribunals operating without full due process which would require those "convicted" to undergo limited punishments such as two or three years of indentured service under government auspices; in order to obtain the benefits of this procedure the beneficiaries would have to come forward in a way that would admit their guilt, and subject themselves to possible prison sentences if the tribunals did not adjudge them qualified, or if they failed at some later time to comply with the mitigated punishment exacted. Under these proposals individuals would "earn immunity" in the same way that the laws do not now allow double jeopardy; they would have done their time.

The misuse of language here is a confusion about the notion of "condition". Conditions may be attached to an amnesty in such a way as to antecedently determine the class of those who will be subject to its decrees; e.g., laying down ones arms, ending the revolt, swearing allegiance, or returning from a fugitive status, or desertion. Conditions are not to be attached to an amnesty providing a form of punishment or it shades over into pardon or punishment and is not amnesty. The proposals for required alternate service are either punishments as conditions for pardon and presume the guilt of those involved or if otherwise

legislated for the class of persons without providing for due process are in violation of the Fourteenth Amendment. The broadest amnesty power is in the Congress to determine what is or is not a law, and it can legislate to provide amnesty for all those it may deign to designate, and it may do so without relying upon the more limited powers of the President to provide pardons for a class of persons, (which is of course an amnesty power also).

The numbers manipulation has confused the public most about amnesty. In principle it should not matter how many people need amnesty; if some human beings need help and it is in our power to help, they should be assisted. The Congress does this many times through a private bill that may benefit only one person. Practically speaking, the issue of numbers has been used to determine whether (a) the class of persons that might be subject to amnesty is significant enough to bother with to obtain corrective legislation, or (b) as an index as to whether amnesty as a procedure is merited as a method for dealing with some large group, which could not be handled under existing courts and laws, or (c) as evidence that the past legal arrangements for dealing with these persons were inadequate if a large number of persons found it necessary to resist the draft, desert, or take other steps when legal or administrative arrangements did not provide for their circumstances, or the political situation provoked strong opposition at a time when the nation had not yet reflected the change in policy on a political matter.

The administration has therefore sought to minimize the numbers of persons involved. The President said there were only a few hundred. Under criticism the President's advisors subsequently expanded those numbers to take the most conservative figures such as those fugitives known to be abroad. The administration has not stressed the number of violators estimated by the Selective Service System, or the number of veterans branded with less than honorable discharges, now estimated on the basis of government figures to be about half a million. The military have tended to minimize and to distort the figures on deserting taking commanders' guesses as to motivation, and to discount the criticism of the military justice system by insisting that military violators be returned to that system from which they fled. On the basis of extensive interviews I can report that even military chaplains are divided as to whether amnesty should be allowed or everyone required to undergo courts martial. Those chaplains associated with brigs and stockades seem to be most favorable to amnesty.

The amnesty movement at first was focused on the numbers of those who had gone to Canada, or were in jail as draft violators. Numbers were inflated by the heavy influx of transients at the time of the Cambodian invasion, and by actual underestimates by those who were doing counselling as to the number of eligibles they were reaching. Now these amnesty advocate groups have discovered the plight of those who were not given full justice either while in the military or in the discharge process itself. Part of this oversight was earlier conditioned by the active hostility of the peace movement to those who were in the military; but this attitude is now almost entirely overcome as a result of the GI movement initially and the changed and broadened perspective of the peace movement in general.

The estimates of the numbers of non-registrants have undergone tremendous expansion this year. My requests from the Selective Service System Office of Public Information for figures on non-registrants were regularly met with estimates of low numbers or no statistics. This year the Director of SSS reports, in the context of justifying the current registration program, that only 10% (200,000) are not registering and that this is better than last year. The Massachusetts Director reported that the shortfall in that state, noted for its greater opposition to the draft, was fully twenty-five percent. Since the cohort of young men becoming 18 is now over two million each year, my own estimate of up to 100,000 non-registrants should be revised upward to half a million or even a million when one extrapolates these reports on non-registrants back over the past five years. (The actual number affected may be higher still, for the 1971 amendments to the Military Selective Service Act extended the statute of limitations so that it runs for 13 years.) This large group is now subject to prosecution if discovered. Now that Selective Service has been computerizing the records of violators, to partly facilitate their apprehension at border crossings and ports of entry, it might initiate the process of comparing its record of registrants with some other government record based on date and place of birth, as in the extensive justice department records, or HEW computers. (Presumably, Social Security System records are still inaccessible.) The thought that so large a population, with a high minority component, would be exposed to prosecution and litigation with the attendant social disruption for the next five to thirteen years is appalling.

The solution for the non-registrants is not only an amnesty, but preferably an end to registration for the draft. Even were a grace period announced for delinquent registrants, there would still be some who will not comply or who do not trust the government's proclamation, or who do not hear about the opportunity to clear themselves. It is not demonstrated on principle that the registration for Selective Service constitutes a significant contribution to defense preparation; there is no significant difference between the time it will take to revise the present records of Selective Service now that registrants are no longer examined for a ready pool, and addresses are notoriously unreliable, and the time it would take to register de novo for a draft in some clear and present danger. The reserves are allegedly the trained supplemental force; untrained draftees are irrelevant to a nuclear exchange accompanying a super power confrontation. The best way to deal with the non-registrants is to do away with the Selective Service records altogether! At the end of World War I, the government conveniently ignored the three hundred thousand draft evaders.

The history of emerging concern about Amnesty does not do credit to the Press, the anti-war movement, nor to the religious community. The anti-war movement used the Christmas season to appeal for amnesty; as early as 1968 Clergy and Laity Concerned raised almost $6000 for relief of exiles, and obtained 30,000 signatures on petitions; but for the most part it was part of the strategy to call attention to the protest and resistance reflected in those who went to Canada. The press gave special attention to the problem at the end of 1971, partly to fill space on the week after Christmas. The churches began to pass pro-amnesty statements beginning in 1969 (United Presbyterian and United Church of Christ national bodies went on record), but serious and widespread discussion waited until 1972. The organizations traditionally identified with the interests of amnesty, CCCO, NISBCO, AFSC, etc., delayed taking contemporary statements of support for amnesty until 1972 and 1973, believing that to do so would interefere with trying to end the war, and that amnesty would come easily at its end. The early stages of the amnesty movement were marred by reluctance to include military personnel and veterans, and not until the Holy Week conference in 1972 did this latter category become established in the amnesty movement.

The amnesty movement has feared that particular groups of potential recipients would be given preferential treatment at the expense of others. The President might have announced that those who had been in prison would be given pardons, which would satisfy his view that there must be a penalty, leaving the vast majority outside such a Presidential amnesty. The exiles have feared being forgotten, and the veterans felt they were being ignored by the activists. It is not surprising that the amnesty movement has almost as many factions as the peace movement, and it has also failed to develop a centrist core, though it is an issue that could sustain support by a broad coalition. Ideological orthodoxy is exacted at the expense of communicating with the people who will have to vote to return to office those Congressemn who dare to vote for amnesty.

The religious groups have been slow to come to understand amnesty, and to support it. The moralism of popular religion has focused on forgiveness and pardon as the categories of understanding, and have stressed that some quid pro quo should be exacted as a sign of penitence. There has been an offensive paternalism in advocating limited forgiveness with magnanimity for sinners which is considerably less than that amnesty offered by God. God's forgiveness is not offered to make people feel guilty but in order to establish a relationship that rises above categories of guilt; the mode of God's amnesty for us is prevenient grace, or forgetting of our iniquities. God's forgiveness blots out our iniquities for his own sake (Isaish 43:25). Teaching the religious people of America what to believe about amnesty remains a formidable task for they do not live by these categories, and do not hear this gospel.

To a large part the hope for amnesty remains with Congress. The Congress understands that it makes and unmakes laws, that the war in Southeast Asia was a puzzling problem for which no easy solutions in their own consciences were to be achieved and this delay forced many people into conflict with the law as they had to decide what to do, and the Congress should also know that there is no great constituency out there who understand what the actual legal function of an amnesty is in a civil state. To a certain degree members of congress will have to vote their consciences on this issue, knowing that it is probably in advance of what most Americans can understand. If amnesty is enacted it will not settle the question of the meaning of this last conflict, it will hold open the door that dissent can be tolerated in a great democracy without destroying it. If amnesty is not enacted,

there will be less encouragement to oppose injustice in the future. Most of all the fate of perhaps a million or more young Americans in need of mercy will be affected by the action or inaction of Congress.

Respectfully submitted.

L. WILLIAM YOLTON,
Coordinator for Field Education,
Consultant to United Presbyterian Church on War, Peace and Conscience.

Enclosures.

STATEMENTS ABOUT AMNESTY BY THE GENERAL ASSEMBLIES OF THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A.

In a statement on "War, Peace, and Conscience" the 181st General Assembly (1969) said:

"Redress. Available evidence indicate that the present administration of the Selective Service law has led to miscarriage of justice in some individual cases; and furthermore, the law itself does not provide relief for those who are morally and conscientiously opposed to a particular war. It is imperative that steps be taken to redress whatever miscarriages of justice have occurred under these conditions as soon and as systematically as possible. Moreover, amnesty for those whose violations of law are based upon higher loyalties in a cherished possibility within the American tradition and compatible with the understanding of God as a God of mercy. Therefore, redress of grievances should include consideration of amnesty in appropriate cases."

In its recommendations to public authorities and the general society regarding public policy the Assembly

"Asks the Congress, the President, other officials and our fellow citizens for reconsideration of the plight of those young men who, in good and sensitive conscience, have found that they cannot participate in a particular war but have not had redress or relief under existing laws. We urge retroactive recognition of their claims and reduction of punitive sentences, together with appropriate amnesty as soon and as systematically as possible."

In a statement on "The Moral Crisis of the United States in Indochina" the 183rd General Assembly (1971) said:

"We . . . warn that the civil rights of dissenters are particularly vulnerable during times of national crisis and tension, and that therefore special diligence must be exercised by the Church, citizens, and the government to preserve those rights. We specifically urge Presidential amnesty for those who are imprisoned or expatriate for conscientious dissent to this war."

AMNESTY

Overture 141, from Maumee Valley Presbytery, requested the 185th General Assembly (1973) to take action "On Dealing with Peoples Alienated from Society by the Vietnam Conflict." It urged a Presidential Commission to determine a benevolent and just solution for such people, stressing the doctrine of grace and forgiveness.

The General Assembly recommended no action on that particular Overture, but adopted the following statement and recommendations concerning amnesty:

"In response to Overture 141, we know and respond to the savir g love of Jesus Christ and therefore, we dare to be agents for God's Love in the world.

"The question of amnesty for those who have been in conflict with the government because of opposition to the war in Indo-China is much misunderstood. Solutions will arise as its moral and theological aspects are explored beyond merely political considerations. We must regain a proper perspective and remember that Christ's Church has a ministry of reconciliation with justice which includes attending to opposing views.

"Because official American participation in the ground war in Indo-China has finally come to an end since the General Assembly last spoke of amnesty, we believe that there is an urgent need for the church to study amnesty in depth. Such a study should include the historical, legal, political, moral, and theological dimensions of amnesty, stressing the unconditional nature of amnesty. Particular attention would be paid to all persons who might be affected by amnesty or further punishment. Study should lead to action in Christian concern to influence others, the media, and the government to achieve solutions that strengthen peace.

"Therefore, the 185th General Assembly (1973):

"A. Reaffirms the amnesty pronouncements of the 181st General Assembly (1969) and the 183rd General Assembly (1971).

"B. Urges that all congregations undertake a study of the question of amnesty in 1973–74 under the guidelines of this statement, using the materials now becoming available.

"C. Requests the Program Agency to continue to provide adequate study materials and to affirmatively communicate to the church at large the urgency of the need for study and the availability of such resource materials.

"D. Suggests that study of amnesty be considered as part of the peace priority program.

"E. Urges all United Presbyterians to prayerfully undertake a reexamination of their views on amnesty."

DRAFT REPEAL

The 185th General Assembly (1973), mindful of the longstanding position of the UPCUSA favoring repeal of the military draft, and mindful of the continuing dilemma posed for young men facing the question of registration for the draft urges UPCUSA church members and judicatories to support the current move toward effective repeal of the draft law.

NAWR,
Chicago, Ill., March 5, 1974.

HOUSE JUDICIARY SUBCOMMITTEE NO. 3,
U.S. House of Representatives,
Washington, D.C.

The National Assembly of Women Religious is an association representing over 3,000 individual members and 88 group members. Following is our complete statement regarding amnesty, expanding our telegram sent to you on the same date.

"The National Assembly of Women Religious, aware of its commitment to a Ministry for Justice, and supportive of Pope Paul VI's theme for the Holy Year, Reconciliation, endorses a universal and unconditional amnesty for those fellow citizens in prison or exile because of their response to laws relating to military service."

S. CATHERINE PINKERTON,
Chairperson.

ARCHDIOCESE OF DETROIT,
OFFICE OF THE VICAR GENERAL,
Detroit, Mich., March 2, 1974.

Mr. HENRY SCHWARZCHILD,
American Civil Liberties Union Foundation, Project on Amnesty, New York, N.Y.

DEAR MR. SCHWARZCHILD: I am sorry for the delay in responding to your letter of February 14th. I am enclosing a copy of two articles I wrote in regard to amnesty. As you note, the one entitled After the War, Three New Goals does not deal exclusively with amnesty, but it is mentioned at some length, so I thought it might also be of some use.

I'm sorry for the delay in getting these two articles to you. I hope my slowness doesn't cause any great inconvenience. If there is anything else I can do, please let me know.

Keep up the good work and please keep me in your prayers as well.

Sincerely yours,

Bishop THOMAS J. GUMBLETON,
Auxiliary Bishop of Detroit,

AMNESTY STATEMENT BY BISHOP THOMAS J. GUMBLETON, AUXILIARY BISHOP OF DETROIT

Americans are divided over the question of amnesty for the 80,000–130,000 draft resisters and military deserters who chose foreign exile over military service in Vietnam. A Gallup Poll indicated that 63% of the American people favor some kind of pardon for these young men. But only 7% favor an unconditional amnesty, one that would not require a few years' alternative service in a hospital, the Peace Corps, VISTA, or some such organization or institution.

I favor an unconditional amnesty for these young men as well as for those who are presently serving prison sentences for resisting the draft. I base my position on the following arguments: First, the American involvement in the war has come to be regarded as immoral by a substantial number of Americans including religious leaders and representatives of religious bodies. The recent general convention of the United Methodist Church described the death and destruction that America has visited on Vietnam as "a crime against humanity". Many Americans have come to see that the draft resisters and military deserters were right in their refusal to participate in this tragic slaughter. Can we rightly punish those with whose political and moral judgments so many of us now agree?

Secondly, the Selective Service Act does not provide for conscientious objection to a particular war. In their November, 1968 pastoral letter, the American Catholic bishops urged a modification of the Selective Service Act to allow for selective conscientious objection. They reaffirmed this position in their October 21, 1971 pastoral letter. Should we punish those young men whose conscientious objection to the Vietnam War does not extend to all wars?

Thirdly, the dislocation of their lives has been a high enough price for these young men to pay for their decision. Their flight from the United States has separated them from family, friends and career opportunities in their native land.

Fourthly, there are historical precedents for the granting of such an amnesty. Among the 37 pardons in American history is the 1795 proclamation by President George Washington of "a full, free and entire pardon" to all persons who participated in the Whisky Rebellion a year earlier in Pennsylvania.

On Christmas Day, 1868, President Andrew Johnson granted an unconditional amnesty to "all persons engaged in the late rebellion" (Civil War).

If rebellion against the United States Government is pardonable, it would seem that refusal to fight in a foreign war is pardonable.

An unconditional amnesty would be eminently consistent with the basic Christian concern for reconciliation. To my mind, the disaffection of so many young Americans for their government (I am not referring only to the draft resisters and military deserters) has been one of the saddest products of the war. An unconditional amnesty would do much to regain the respect of our young people for their government. It would be a sign to them that their government has a heart, that it stands for the life and liberty of its citizens and not just for the death of its "enemies", and that it does not claim political and moral infallibility.

An unconditional amnesty would hopefully be met by a spirit of forgiveness in those who have been morally opposed to the war, some to the point of calling for war crime trials. An attempt by the one side to separate the truly conscientious objector from the coward or by the other side to fix blame for the Vietnam Tragedy on certain individuals will only tear us further apart. I think at this point we need to have a spirit of reconciliation, of forgiveness, on both sides.

Whatever your position on amnesty is or will be, I would hope that it was or will be preceded by the serious thought that the question deserves.

MASSAPEQUA PARK, N.Y.

(Sp4c. Kim M. Diliberto, 124-40-5964, Combat Medic., Americal Div., K.I.A., Vietnam, Aug. 17, 1969).

DEAR MR. DIXON: As the parents of the above deceased, we feel that his death was in vain.

Some young men like our own son will never come home. Others have returned shattered; physically, mentally, or spiritually. Those Americans in exile, prison or underground, who refused to participate in an immoral and illegal war are also victims of the Vietnam tragedy.

We support a total Amnesty for all War Resisters.

Respectfully,

DOMINIC DILIBERO.
URSULA DILIBERTO.

47

The Case for Amnesty

AMNESTY: SOMETHING DECENT FOR A CHANGE / Ramsey Clark

THE ONLY TRUE HONOR / Louise Ransom

THE POLITICS OF AMNESTY / Carl Rogers

AMERICANS FOR AMNESTY / A National Campaign

A Brief For Amnesty: Something Decent For a Change

by Ramsey Clark

The war in Indochina leaves our nation divided and troubled. For many, believing we have found peace with honor is essential to self-respect. For others, the dishonor, self-inflicted by our violence, will require generations of service to humanity if we are to redeem our character. The war has left a heritage of hate, doubt, grief, fear and anguish.

Few experiences in our history have so tortured the American soul. Our denial of the common humanity of the Indochinese, our use of technology against life there, have raised profound questions of our purposes as a nation and whether we intend justice.

Among the people of Southeast Asia, over two million have been killed. All have suffered. The war has been the single most significant fact in the life of everyone. Nature herself has been ravaged.

More then 50,000 American men have lost their lives to the war. Still greater numbers have lost their health and wholeness. Hundreds spent months or years in foreign prisons. Several million others spent years of their lives in a military pursuit they did not choose, and often did not believe in. The nation, as a whole, has given an enormous amount of its energy and resources, diverted from the urgent needs of life: food, health, knowledge, labor, adequate housing, liveable cities

The war leaves another enormous group of casualties: young Americans forced to choose between obedience to the Military Selective Service Act and the drastic consequences of failing to do so. For many who chose military service the conflict came later, leading to desertion or a discharge less than honorable. Except for the war, none of these young men would have been confronted with this necessity to choose that brought them into conflict with their government. However we feel about their actions, we should not assume their course has been easy for them, their families, or their friends. They have borne a full measure of grief, hardship, and suffering. It continues until this moment and—even if assuaged by amnesty—will continue until death. The war is the single most significant fact in their lives.

More than 50,000 young men stand charged or convicted of violating the draft laws. Some 7,500 are felons because of their conviction. Another 5,700 are under indictment. Nearly 40,000 others have been referred to the U.S. Department of Justice for prosecution.

We do not know how many young men refused to register for the draft. The Bureau of the Census estimates that ten percent of those who became 18 years of age in 1972 did not register. If so, then in a single year several hundred thousand violated the Selective Service Act. Extend this through the years of our longest war and the result is several million young men wondering whether application for a job or being stopped by the police for jaywalking, will reveal their status and result in a prison sentence.

A half million or more in the military went AWOL or deserted in the years of the Indochina war. While most returned, many to face courts-martial and many to be discharged dishonorably, more than 30,000 remain "at large," according to Pentagon statistics.

Over 450,000 persons have been separated from the service with discharges less than honorable. Many who received less than honorable discharges served two, three or more years in the military, but lose virtually all federal and state veterans' benefits, including educational, health and employment preference benefits. Many of these discharges are not based on so much as a charge of serious crime, but arise from unsubstantiated allegations of conduct such as homosexuality, failure to pay debts and drug abuse. The sense of justice and the effect of such discharges are shown dramatically by the veteran who became addicted to heroin in Vietnam. He has been barred from military health benefits and from V.A. treatment, while his discharge deprives him of employment preferences and deeply prejudices his chances for a job or unemployment benefits. Above all, he is branded for life.

Under the direct coercion of law, these young men became victims of discrimination by classification clerks, draft boards, commanding officers, and courts-martial before whom they stood, often uncounseled and uninformed of their rights. They suffer a stigma that greatly diminishes their chance to hold a job, to live normal lives, to make a contribution. We should ask what this accomplishes, and why a free democratic society vests such arbitrary power in the military to blight so needlessly the lives of those it finds unacceptable.

Today, thousands of young Americans who have violated the law of their land live in exile, unwelcome by the Lady in the Harbor whose torch once burned for the poor and oppressed of all lands. More than 20,000 have obtained per-

manent legal status in Canada, with perhaps as many there without such status. Most live, furtively, here in America; lives of quiet desperation.

While these young people were refusing to register, resisting induction, deserting from the service, and receiving less than honorable discharges, millions of young men in their age group, with the privileges of wealth, knowledge, power, and opportunity were evading military service. Famous, physically strong professional football players and affluent young men who "knew the right doctors" received medical deferments. For several years college campuses offered haven to young men often beyond their academic interest. Some with no prior or permanent intention to teach, were able to use this occupation as an escape from military service. National Guard ranks and reserve units of the military services were swelled by young men avoiding the draft and the war. Of the draft-age men, numbering in the tens of millions, most were not directly affected, while chance combined with disadvantage to place a million or so others in direct conflict with the government and to deeply scar their lives.

Still, there is a rage in many American hearts against persons who resisted the draft and the military. The causes given for that rage should be examined and tested against our concept of justice.

Those who invoke patriotism to oppose amnesty for war resisters fail to understand our history and philosophy of government. Many of our greatest Presidents, unquestioned patriots, have granted amnesty. A free democratic society does not seek blind service, but rather calls upon its people continually to question that which it is considering and that which it does. It fosters free speech and protects the right to dissent as essential tools for the discovery of truth. It does not compel conduct by force or fear, but seeks support by reason and commitment to its purposes.

Those patriots who say if we grant amnesty, we will not be able to defend ourselves in the future, have lost faith in America. How long can armies raised by fear and force win wars? They see our young men as too selfish or unconcerned to fight for their country, unless forced to do so. A nation reduced to such low esteem in the hearts of its people will not long endure. This is not America.

Those who argue that the young men who did not enter or serve the military do not love their country, have failed their civic duty and thereby lose claim to the nation's blessings, do not understand love or duty. People who love their country will conceive it as their highest and most constant duty to avoid ever having to choose between their country and justice. We must strive to make our country just. Indeed, its spirit is our country; this land is merely where we seek to create a hospitable home for justice. Those who refuse military sevice live here by right equal to ours.

Those who say we should punish these young men because they are cowards, do not understand the nature of courage and cowardice. For the individual opposed to war, it has usually taken far more courage not to serve than to have done what was expected, what avoided the risk of prison and social ostracism, what most of their peers were doing. And in addition, suppose some were cowards, is it not fundamentally wrong to punish cowardice? Is not cowardice itself punishment enough? What kind of country punishes cowards? It is their country, too.

Some say it is unfair to those who obeyed the law, to those who sacrificed, and most of all to those who died, if men who refused to serve in the military go unpunished. First, we should hope those who serve do so because they believe it right. Having the strength of their conviction, they will not want to punish those who disagree. If they participated against their will, it was the government that forced them, not those who resisted. No one who failed to join the military forced another to take his place. Each made his choice, and left it for others to do the same. To punish further those who did not perform their military service cannot restore the years spent in the military; cannot heal the wounded, cannot give life to those who died.

The greatest dishonor we could inflict on the memory of the men who fought and died for what they believed was the American dream would be to abandon or diminish its glory. The American dream is freedom, equality, justice and peace everlasting. It is strong, unafraid, and loving. It is not mean in spirit. It does not inflict suffering or deny the chance for fulfillment to any person. It believes in life and the pursuit of happiness.

Amnesty is a legal act by which prior convictions are nullified and past violations of law are erased and henceforth cannot be prosecuted. Amnesty does not forgive, condemn or condone, it simply forgets; wipes clean the slate so that the nation can go forward from that time.

The United States Constitution in Article II, Section 2, delegates plenary power to the President to grant amnesty under the reprieves and pardons clause. Within that power the President may restore rights, and prevent or set aside convictions in whole or in part to individuals or classes.

Congress also has full power to grant amnesty in whole or in part to individuals or classes by legislative act. Just as Congress can repeal a law, it can provide against further prosecutions and even compensate for past convictions.

Thus amnesty is an act of law contemplated by the Founding Fathers as a desirable power of government and delegated to the Congress and the President. It has been generally recognized as an essential technique for achieving justice under the rule of law. Amnesty is among the noblest uses of the law because its purpose is generous. It promises the chance to humanely refine the application of law to assure justice. It reminds us that the law is not a vulture picking on the bones of the despised poor. The law can and should always be the will of the people, sensitive, gentle, loving. Amnesty reflects a Constitutional conception of compassion.

Presidents—including George Washington, John Adams, Thomas Jefferson, Andrew Jackson, Abraham Lincoln, Andrew Johnson, Ulysses Grant, Theodore Roosevelt, Calvin Coolidge, and Harry Truman—have granted amnesties. Often they acted in hours of fear and hatred. While there has not yet been a universal, unconditional amnesty, the spirit guiding those granted stretched toward all. The desire to heal wounds, to unite peoples, to turn from the past toward the future, to prevent suffering that a soothing law can alleviate, has motivated amnesty. If earlier amnesties rationed justice, still they recognized and sought it.

Many do not oppose all amnesty, but believe only those who give equivalent time or were motivated solely by conscience should receive its benefits.

Some favor amnesty only for those who agree to perform a public work for a period of time. Whatever the merit of such alternative service offered those once facing induction, it is meaningless years after the choice of military service was forced. It will not be accepted by many. Their lives have been disrupted and altered already. Years have been lost. Alternative service also implies the necessity for atonement. Most who resisted feel this would compel them to deny the moral rightness of their acts even in the face of overwhelming national opinion that the war was wrong. This they will not do. Further, the probability of a constructive, humane alternative service being developed in the light of past experience is remote. Too many have learned with Dostoevski that the cruelest punishment is to be forced to work at a meaningless task. Make-work is the last thing America needs. We need desperately to get on with healing the nation's wounds and restoring dignity to the lives of all people.

Some want a judicial type review of each case with amnesty only for those who acted from conscientious conviction that all war is wrong, or that this war was wrong. But is it not inherently discriminatory to grant amnesty to a young man raised in a religious family who opposes war, and deny it to a ghetto black born in the midst of America's violence, who found himself in Vietnam with an M-16 rifle in his hand and discovered he did not want to shoot those little yellow-skinned people? Creation of review boards to examine cases on an individual basis is not a feasible alternative. Delays, inequities and discrimination would necessarily result. People will not voluntarily submit to custody to wait for years while courts review thousands of cases to learn whether they are going to prison, or not. Nor can we determine motive. It resides exclusively within a person. It has been irrelevant in our criminal law. We should not determine motive if we could. We should be judged by our acts. It is a cruel and meaningless game by which we avoid facing up to our need for compassion.

Finally, there are three overwhelming reasons why America needs to grant amnesty—full, generous, absolute, and without condition—to everyone who failed to register, or report, who deserted or received a less than honorable discharge.

Amnesty will bring us together. If we do not grant it, thousands of American families will live out their lives separated from their sons. Emotionally and physically, mothers, fathers, brothers, sisters, relatives and friends will be unable to live together. Beyond this, whole segments of our society will suffocate in the anguish of the past that cannot be overcome until we put it behind us by forgetting the violations that divide us. Then, hundreds of thousands can come out into the light, breathe the air freely and participate fully in an open society.

Those who believe the war was wrong, those who believe it right and those who believe in their country, right or wrong, must summon the strength to reject the application of government sanctions so we can proceed to solve the problems that face us. We must not permit weakness, fear and hatred to so overwhelm us that we will not put aside this chapter in our history in order to unite the nation and begin again for a truer America.

Amnesty will teach us the compassionate use of law. Is there not enough suffering beyond our control that we should purposely and needlessly add to the grief of our people? Amnesty is a single, simple, cost-free act of democratic will. All that is required is that we want it. Are we a people who take pleasure from the suffering of others? The moral necessities of the nation urgently call for amnesty. Through it, the law becomes moral purpose again, ennobling, bringing out the best in people. We become masters of our fate: our law, humane, striving for justice and the alleviation of suffering. Law is not a dead hand imposed by

some omniscient power. It is meant to be the will of the people. It can be an effective instrument for social change. In a mass, urban, technologically advanced society, it must be a major means of providing the essential qualities of life, health, education, jobs, houses, the preservation of the environment, the freedom and security necessary to the dignity of the individual and peace on earth. Amnesty can show us—if we will disenthrall ourselves and grant it—how law serves rather than subjects.

Amnesty could help lead us toward peace. To the world community, it says America is unafraid. It seeks to do right and concedes the possibility that it may err. It will try to understand its exiled sons' resistance to war. Their voices will join the voices of the nation again. It will not bar from its midst those who refused to fight. It will hear them again, live with them again, love them again.

One reason President Nixon opposes amnesty is he fears it implies the war was wrong. I believe the war was wrong and we should do all we can to stop murdering with our bombers forever. But amnesty does not mean all this. It only means we are willing to try to live together, to understand each other, to learn.

The voices of many young Americans living in exile are angry. The President is angry. Neither should control our conduct. We must act from reason. A President who brings a band of outlaws to the White House and other positions of power and speaks words of praise for men such as Haldeman and Ehrlichman while opposing amnesty, will not lead us to truth. Living together might. From those who evaded and deserted, we can hope to learn why and perhaps see that war is death and peace is life.

Then too, in the midst of this Slough of Despond, where wars and Watergate have mired us down, to restore our faith we desperately need to do something decent for a change. Amnesty is a decent thing to do.

The Only True Honor

by Louise B. Ransom

It is not possible to deal with the subject of amnesty for 500,000 young Americans without first dealing with the subject of the Vietnam War.

The war and I have endured a lasting relationship since my oldest son, Mike, was killed near My Lai five years ago this spring. He arrived at his first assignment—a new 2nd Lieutenant infantry platoon leader—on the very day of the massacre, March 16, 1968. After that unspeakable atrocity committed by our own American troops, who could blame the embittered South Vietnamese farmer who set the mine that killed Mike such a few weeks later?

Had he been alive in November, 1968, he would have rejoiced that Lyndon Johnson had been deposed. He once wrote: "I did hear Johnson's speech of de-escalation and non-candidacy and thought it the best of his career. It created in me a great sense of hope that this obscenity over here would end shortly." How he would have welcomed the new President with his shining promises to end the war and bring us together.

But where are we now, five long years later? We have a cease-fire and "peace with honor," but we have not ceased firing, people are still dying, and honor is nowhere to be found.

We can look back in horror and shame that the most advanced technological nation in the world was virtually annihilating—in the name of freedom—several primitive agricultural countries to preserve the thrones of such leaders as Nguyen Van Thieu and Lon Nol. The ultimate anguish for me is that my own son lost his life in the perpetration of such shame.

And the shame grows as the perfidy of our leaders is revealed through the deceptions detailed in the Pentagon Papers and the disillusioning reality of Watergate. This painful knowledge clarifies for me the action of those men who would not permit their bodies to be used, as Mike's was, to continue the madness. Their "crime"? They refused to obey leaders whom they could neither believe nor trust.

I share bitter tears with all of those who are victims of this war, particularly the 57,000 mothers whose sons will never return. We mothers weep also for the thousands of our sons who are maimed for life, wounded in body and spirit. There are, of course, not enough tears in the whole world for the mothers in Indochina. Creating half a million more war victims because of intransigence to amnesty is unbearable to contemplate.

The deepest tragedy for me, too deep for tears, comes from despair over what we have become as a nation. What are our true values? What does it mean when our heroes are professional warriors, when the bulk of our treasure is spent for instruments of death rather than to improve the quality of life, when the leaders we choose to govern us value power above people?

How are we parents, conscious of our American heritage—founded in dissent and dedicated to freedom—to raise our children to be proud of their country in such a climate? Have we not placed in jeopardy the very birthright of their whole generation to life, liberty, and the pursuit of happiness?

How can I help my five remaining sons to find some positive meaning in the death of their brother?

My husband and I have long faced the difficult truth that there was no gain for this country from our son's death. His life was wasted by his own government and nothing we do can alter that.

But the President, in an effort to find value where there is none, has said: "Let us not dishonor those who served their country by granting amnesty to those who deserted America." In other words, if amnesty is not granted, the death becomes honorable. I must disagree.

The only way we can dishonor those who died is to learn nothing from them—to repeat the past and continue our present course of action.

We are a divided, corrupted, and bloodstained nation. A universal and unconditional amnesty for men who refused to fight in the war—the ghastly symbol of all that is wrong—might just be the very element that could help to heal us.

At the very least, it could reconcile parents and sons. It could also restore our pride in ourselves as a compassionate people. It could revive our vision of devotion to social justice and renew our self-confidence by recognizing freedom of conscience for all.

Let us, therefore, join hands,—rich and poor, black and white, parents and children—united in our faith in the healing power of amnesty, and determined to achieve it.

If somehow all the sorrow, and all the tears, and the killing can help us to become a better people, perhaps then, and only then, can we say that these deaths—these sacrifices—have been redeemed and will have had a positive meaning for us as Americans—the only true honor.

The young dead soldiers do
not speak.
Nevertheless, they are heard
in the still houses: who has
not heard them?
They have a silence that speaks
for them at night and when
the clock counts.
They say: We were young. We
have died. Remember us.
They say: We have done what
we could but until it is
finished it is not done.
They say: We have given our
lives but until it is finished
no one can know what our
lives gave.
They say: Our deaths are not
ours; they are yours, they
will mean what you make
them.
They say: Whether our lives
and our deaths were for
peace and a new hope or for
nothing we cannot say; it is
you who must say this.
They say: We leave you our
deaths. Give them their
meaning.
We were young, they say. We
have died. Remember us.

—Archibald MacLeish

AFA 235 East 49th Street, New York, N. Y. 10017 (212) 371-7080

THE POLITICS OF AMNESTY

by Carl D. Rogers

(Carl Rogers was a Chaplain's Assistant in Vietnam with the Army's 1st Logistical Command. He was a Co-founder of the Vietnam Veterans Against The War in 1967.)

One Word of Caution

While the return of the POW's signaled the end of the war for many Americans, it is clear that their return did not mean the end of the divisive issue, Vietnam. Nor did the removal of the remaining troops in Vietnam really mean, as we were told, that the war was over, that Americans could let Vietnam fade, at last, from their memory.

Although the war—along with so much else—has been overshadowed by Watergate, our intervention in Indochina continues, and tens of thousands of political prisoners remain in Saigon jails. As we begin to talk about amnesty let us acknowledge the existence of a "post-war" atmosphere, created by the release of our POW's and the withdrawal of American fighting men, but let us not talk of amnesty as a post-war issue until there is no more war.

And let us be aware of the tremendous task before us in educating the American people about these other victims of the war: the young men who refused to wage it. Though the public may well believe the war is over, that has not seemed to make them more open to amnesty, at least an amnesty as presented to them so far. In fact, pollster Lou Harris' surveys indicate a hardening of attitudes on amnesty for war resisters over the past two years.

Harris Polls	Favor	Oppose	Not Sure
June, 1972	38	53	9
August, 1972	27	60	13
March, 1973	24	67	9

A New York radio station (WNEW) sampled sentiment in the greater metropolitan area and found 79 percent saying "No" to the question of whether "some sort of amnesty" should be granted to those who avoided the draft by leaving the country. Amnesty for deserters brought an even higher number of "No's."

When the issue is spelled out or dramatized, however, as in the case of a recent hour-long TV program sponsored by the National Council of Churches, the response is quite different. Viewers reactions to the courtroom drama about a self-exiled resister ("Duty Bound") showed 70 percent in favor of amnesty, according to the tabulation of over 9,000 "jury verdicts" mailed to the Council's Broadcasting and Film Commission.

Our job is quite clear. So are the battle lines drawn by the President.

Q. Mr. President, do you have anything specifically in mind to help heal the wounds in this country, the divisions over the war, and specifically, anything down the road much farther in terms of amnesty?

A. Well, it takes two to heal wounds, and I must say, when I see that the most vigorous criticism or, shall we say, the least pleasure out of the peace agreement comes from those who were the most outspoken advocates of peace at any price, it makes one realize whether some want the wounds healed.

Most of the "peace community" desperately want to heal the wounds of this war, but many of the war resisters themselves see the opportunity now to make their political act come alive. The issue of amnesty, they say, was raised prematurely by the media—NEWSWEEK magazine had a cover story on the subject in January, 1972, a full year before the signing of an agreement designed to end the war—but the war exiles are ready now for the confrontation which they believe the President has created. Hear one, a member of the Union of American Exiles in Britain:

> Nixon has raised it as a political issue and we're going to throw it back as a political issue. If he doesn't let us back, then he's going to have thousands of us making noise all over the world. We'll raise the issue.
> So far people haven't paid much attention to us, because they've always said, "Oh, well, wait till the war is over, you'll get to go home." Virtually everybody believed that. But I don't. The only way we'll get to go home is if we fight like hell for it.

Now, as far as amnesty is concerned, I have stated my views, and those views remain exactly the same. The war is over. Many Americans paid a very high price to serve their country, some with their lives, some as prisoners of war for as long as six to seven years, and, of course, 2½ million, 2 to 3 years out of their lives, serving in a country far away in a war that they realize had very little support among the so-called better people, in the media and the intellectual circles, and the rest, which had very little support, certainly, among some elements of the Congress, particularly the United States Senate, but which fortunately did have support among a majority of the American people . . .

The Early View From Capitol Hill

Although the President often felt little support for his war policies from Congress, he is not yet experiencing that problem on the amnesty issue. Only three Representatives have been willing to sponsor legislation calling for universal, unconditional amnesty. One of them, Congresswoman Bella Abzug, states her position quite simply: "How can we implore the Vietnamese to achieve reconciliation if we cannot ourselves?" Most of her colleagues in both Houses haven't thought it quite that easy to deal with.

A recent UPI survey of the Senate showed almost total opposition to unconditional amnesty. Only one Senator, Mike Gravel of Alaska, publicly supports an amnesty without penalities or conditions. The UPI report said another "Democratic Northwest Senator, who asked not to be identified, favors amnesty without strings."

"Whatever the Senate may do, it will not come soon," said Michigan's Philip A. Hart. "Before it is over, we will probably have reason to regret that amnesty will have been so long delayed for those who were motivated by conscience, not cowardice, and driven by moral concern, not self-interest."

But from the other side of the aisle—and the issue—came views like those of Senator Henry Bellmon, Republican from Oklahoma: "I have no sympathy with the cowardly young men who leave their country when a war starts and then try to come back in when the war is over." And from Senator Alan Bible of Nevada: "It would be unconscionable to grant general amnesty to those who shirked their responsibility under the law."

Whether the revelations of the Watergate hearings will have any influence on the Senators' amnesty positions in the future remains to be seen, but their present attitudes so far give little hope for legislation.

"As far as I'm concerned, they can stay there," said Assistant Senate Democratic Leader Robert C. Byrd of West Virginia," and, adds Republican Senator William B. Saxbe of Ohio, "I think we are well rid of them. We ought to let them go."

Senate GOP leader Hugh Scott believes that as "the months and years pass," there may be "exceptional circumstances" by which amnesty cases can be treated individually. "For example," says Scott, "suppose an evader had terminal cancer? Would you deny him the right to come home to die?"

Senator Mark Hatfield, a long-time dove, says he must deal with the unfortunate fact that "amnesty at this time is a political impossibility." Accordingly, he has not introduced any legislation to grant amnesty and does not anticipate any forthcoming from any other Senator "unless and until substantial public support can be developed for such legislation."

Senator George McGovern, who says he favors unconditional amnesty "in principle," thinks the pressure has to be applied on the White House, although at a press conference in mid-February he was unwilling to restate his differences with the President on the question. "I'm not going to have much to say about that," he said. "If it comes, it will have to be by executive order. There's not sufficient strength in Congress to force the President's hand."

Who Needs Amnesty?

He may not yet fit the President's so-called better people label—his father surely does—but James Reston, Jr. understands the politics of amnesty. He has written a book that focuses on one deserter *(The Amnesty of John David Herndon)*, a story likely to evoke compassion from even the most hawkish of readers, but Reston's purpose is not to seek a humanitarian response on the issue of amnesty—or even a reconciliation between generations, which he sees as one reason for amnesty. "The real issue," he concludes," is the matter of responsibility for what American involvement has brought to the people of Indochina, and what it has done to America as a nation. If this country can face the evidence of the past seven years without avoidance or excuse, if it can recognize what we have become as a result and set about to reclaim our heritage, if it can see the necessity to attend to all the victims of the war in a spirit of obligation, then a universal amnesty for war resistance can come easily, and an end to a long era of recrimination can come early."

John David Herndon, the son of an Appalachian family, a wounded and decorated Sergeant, deserted from the Army in Europe to avoid a second tour of duty in Vietnam. He may not have been able to fully grasp the political ramifications of his return from two and one-half years of exile in France, but others, thanks to Reston, can better understand the men like John David Herndon. His instincts, like so many other deserters, were always good; his feelings unmistakable:

> On Mme. Binh—"I went over to see her with Mary Richardson of the Black Caucus. Mary and Mme. Binh did most of the talking. Mme. Binh was very, very friendly. She's a very, very smart woman. They discussed black people in general: How they were discriminated against in America. Mme Binh agreed. Black people were just like Vietnamese people. Anyhow, that's the conclusion they come to and everyone got an NLF pin and a ring, and that was about the extent of the conversation."
>
> On amnesty—"I am not going back asking the country for forgiveness. I have done what I think is right. That has been refusing to participate further in the war in Vietnam. I was in Vietnam. I was wounded in Vietnam. I refused to go back a second time after I had been there 15 months. I would go back to Vietnam voluntarily, if there were some way I could help the people without killing the people. I ask the American people to grant universal amnesty for people like me opposed to the war in Vietnam who are now in exile."

We cannot provide forgiveness for them, those who served paid their price, those who deserted must pay their price, and the price is not a junket in the Peace Corps, or something like that, as some have suggested. The price is a criminal penalty for disobeying the laws of the United States. If they want to return to the United States they must pay the penalty. If they don't want to return, they are certainly welcome to stay in any country that welcomes them.

> "A desire for freedom was the first impulse which spurred most men to Canada. This was an honest motive, and in keeping with America's traditions. If a young man accepted the draft and went into the service he lost his freedom for a reason he couldn't justify; he might also lose a limb or even his life; and to stay in the U.S. and go to jail or to go underground would cost him his freedom as well. In this sense then—searching for freedom, running *toward* something rather than running away—going to Canada was a positive act."
>
> —*The New Exiles*

A positive act, yet they were derogatorily called evaders and draft dodgers, when, in fact, those who *really* evaded and dodged the draft were men like football hero Joe Namath, who managed to "beat the system"—in this case the Selective Service System, and in Namath's case, getting out with a "trick knee." Many of the men who went to Canada could have dishonestly evaded the draft, too, but they chose, instead, to make an important personal statement by their act, a statement in opposition to the war. They were not draft evaders and draft dodgers, they were draft *resisters*.

Many are America's loss. Especially in Canada, many have made a success of their lives in exile—people like Tom Hathaway, heir to the shirt fortune, musician, former student at Toronto's Royal Conservatory of Music; Bruce Garside and his wife, both with doctorates and professors of philosophy; Ross Hazel, photographer *par excellence*. There are, as well, thousands of others—doctors, artists, writers, photographers, poets, musicians, skilled laborers, and craftsmen. I met a number of former Peace Corpsmen who were drafted following two years service in far corners of the world.

Perhaps fearing America wouldn't want them back, these people have adopted Canada permanently as their home. But I am convinced most all would welcome the right to return when they wanted.

The Numbers Game

. . . There might be a tendency to say now, to those few hundreds who went to Canada or Sweden or someplace else, and chose to desert their country because they had a higher morality, we should now give them amnesty.

31-658 O - 74 - 48

Not since the Civil War have so many Americans needed amnesty—perhaps over a million if you count all the violators of civil and military law whose "records" resulted from war-related protest in the Vietnam era. It may be impossible to know the exact numbers, but here is a "3-D Look at Who Needs Amnesty" we have prepared with some of the figures that can now be substantiated.

52,143+ DRAFT RESISTERS

During the war in Indochina:

7,443 **men were convicted by federal courts for violations of the Military Selective Service Act.** These men are classified as felons. Some 3,666 were imprisoned with sentences that varied from less than a year to as long as five years. (Source: Administrative Office of the United States Courts)

39,000 **additional names of draft "violators" were referred** to the Department of Justice **for prosecution.** (Source: Selective Service System)

5,700 **others face "outstanding" indictments for draft violations.** For them, further legal action is pending. (Source: Department of Justice)

? **Unknown numbers of young men—** believed to be in the thousands—**never registered for the draft at all.** They are not listed among these Selective Service or Justice Department figures, but are subject to prosecution in the event the government learns of their violation.

32,557+ DESERTERS

32,557 **Members of the Armed Forces** are "at large" and **listed as AWOL or "deserters."** The Department of Defense states that 2,525 are known to be in foreign countries, including less than 500 in Sweden, but they list only those people whose whereabouts have been determined through intelligence information. Most are underground or in Canada. Robert Musil ("The Truth About Deserters," THE NATION, April 16) points out: "Obviously, large numbers of deserters have been remiss in reporting changes in address."

Nearly 100,000 service personnel deserted per year at the height of the war in Indochina. DoD desertion records which the Pentagon now says have been marked "Not To Be Used—Inaccurate" indicate that as of January 1972, there were 134,479 deserters at large. (Source: DoD)

20,000 draft-age American men were admitted to Canada as "landed immigrants." It is widely believed that for every "legal" exile in Canada one entered illegally as a "tourist" but remained beyond the expiration of his tourist permit. (Source: Canadian Department of Manpower & Immigration)

450,000 DISCHARGES LESS THAN HONORABLE

450,000 **Vietnam-era veterans were discharged with less than an Honorable Discharge.** Most resulted from the decisions of over 550,000 Courts Martial, for the "crime" of going AWOL or some other "offense" that would not be punishable in the civilian world, such as disrespect for an officer, conduct bringing discredit upon the Armed Forces, or the infamous catch-all of the Uniform Code of Military Justice: Article 134 which covered "all other acts prejudicial to good order and discipline." Only recently was this article ruled "unconstitutionally vague" by the Washington Court of Appeals. (Source: DoD)

? **Unknown numbers of civilians whose** active opposition to the war brought them into conflict with the law.

534,700+ AMERICANS IN NEED OF UNIVERSAL, UNCONDITIONAL AMNESTY.

More Than Numbers

Whether it is "those few hundreds" in need of amnesty, as the President suggests, or hundreds of thousands as these figures indicate, without amnesty it's all the same in the end: youth lost, futures lost, lives full of fear, young people forced to survive by wits alone. These are the other victims of the Vietnam war—victims of a Selective Service System so selective that less than 8 percent of those subject to the law were ever inducted under it.

Perhaps the most victimized of all the war resisters, for whom we seek an amnesty, are the deserters. Let us look at four categories of these men as described by Roger Williams in *The New Exiles*. Williams, himself an exile for six years, writes only of American war resisters in Canada, but I believe the descriptions apply to all deserters, regardless of when and where they were forced underground or into exile.

The first group Williams calls the organizers—those whose experiences in the military radicalized them and, in turn, who attempted to politicize their fellow GI's. Some simply talked about the wrongness of the war or passed out literature about Vietnam. Others worked on GI newspapers (of which there were nearly 70 at one time), or they gathered at one of several GI coffeehouses that began springing up around military bases in 1967.

In the second category of deserters—which Williams says is by far the largest—are the non-activists, those who simply object to war, or to being forced to fight an undeclared war. Through common sense this group of men came to know that the war in Vietnam was wrong. Theirs is a gut reaction to fighting and killing: "a feeling that one has to draw the line against the curtailment of freedom, and a knowledge that they could not take the brutality of the U.S. Army, the de-humanization, the loss of identity and what Dr. Peter Bourne, an orthopsychiatrist and decorated Vietnam veteran, calls the 'mortification of the self'."

The third category, perhaps 30 percent of the deserters, according to Williams, can be defined as being very young, very frightened, and very sad. They are the real American refugees who at seventeen, eighteen, or nineteen have been forced to run for their lives and begin a new life in a foreign country.

A group of concerned citizens and clergy, including Bob and Louise Ransom and myself, worked with the Committee for the Presidio 27 to provide public defense for some men in this category, including two who "deserted"—escaped is a better word—and went to Canada. Attorney Terrence Hallinan was their key lawyer. Of these men he said:

> Of course, you've got to understand that inability to adjust in terms of the society they come from and the nature of the Army and the war in Vietnam. These are the children of America's poor whites, a hidden class of people. They are uneducated but not at all stupid. They may have come from loveless homes, but they can love. In peacetime they would never have been held in the Army, but because of the war—because the Army needs every body it can get—they couldn't be discharged. The war is really so unpopular among the GI's that the Army senses that if it started giving these discharges—CO, psychiatric—the floodgates would open and thousands of men would try to get out. Since they can't let them out, yet they can't use them in the field, they fill stockades with them.

". . . Or," adds, Williams, "the Army finds that they have deserted."

The fourth category of men who have deserted are the saddest of all, those dull young men, perhaps mentally deficient or emotionally disturbed, who end up in the Army for lack of anywhere else to go, often sent there by civil courts instead of to youth correction centers. Williams reminds the reader that included in this group were the dropouts of Defense Secretary McNamara's "Project 100,000" designed to "salvage" men considered unfit for military duty—draft rejects and substandard volunteers, most of whom McNamara thought could be educated and trained for productive military careers and productive roles in society. This project serves as a good example of why we feel amnesty should apply to all of the 450,000 service personnel with less than Honorable Discharges—even if they never uttered a word of protest about our involvement in Indochina. As Hallinan pointed out, the Army needed every body it could get, but these men wouldn't have been in the service had it not been for the war and for programs like McNamara's "Project 100,000." Irving Greenberg, the director of the training effort, said the military has the advantage of giving high motivation. "In every learning situation—basic reading, general high school equivalency program or job training—the men can see instant reward or punishment that's directly related to what they are learning," he said.

Recently Ralph Nader released a 450-page report on Vietnam-era veterans that indicates these underprivileged youths never received the special training they were promised and ended up going into combat two to three times more often than other soldiers, reminding me of the oft-repeated warning from our NCO's in Basic Training: "There are two kinds of soldiers—the quick and the dead!"

The men in this group of deserters needed help, but the Army was neither able or willing to give it to them. So they were either driven to the stockade, to suicide, or into exile says Williams, if they happened to know that option. Nor did the Army ever discharge these men; they discharged themselves.

Williams, describes the efforts of groups like The American Deserters Committee in Montreal, who attempted to help as many of these men as possible, finding them Canadian psychiatrists, social workers, jobs—when possible—but, for the most part, little could be done. "They are truly lost, a whole mass of children driven to real or near madness, called insane while they attempt to choose sanity in the face of an insane reality. They represent the real American tragedy."

Now, I suppose, Mr. Sheldon, that your question with regard to amnesty may deal with the problem of healing the wounds. Certainly I have sympathy for any individual who has made a mistake. We have all made mistakes. But also, it is a rule of life, we all have to pay for our mistakes.

How They Feel

Many of the exiles have written home to friends and family that they felt good, content—free in Canada or Sweden or Paris or London—that they were glad to be where they were during this time of trouble. But few of them talked freely of the mental agony, the alienation, the loneliness, that they also experienced. They did not always write home about what it was like to try and pick up their careers (or even get work to survive) in a country they didn't want to live in. They seldom wrote about what it was like to survive on little or no money for years on end, to be a poor immigrant, or worse, a refugee. These experiences have marked all of the resisters—admittedly, some more than others—but all have already paid a price for their decision. It seems ludicrous to assume that any of them would seriously consider the suggestion that they pay *again* if they want to come home.

James Reston, Jr. concurs: "Exile is penalty enough. It is self-imposed alternate service. For this government to add an additional penalty would be a cowardly act, contemptuous of the past, unrelated to a new beginning, and one the exiles have made very clear they will not accept."

Reston hits on the reality of the amnesty issue in recounting a verbal exchange, not involving his book's subject, John David Herndon, but his wife and Dean Rusk. It took place in the spring of 1972 at Duke University:

"What do you want me to do?" Rusk asked, as Denise Reston pressed him on amnesty. "Say 'I'm sorry? They were right and I was wrong'?"

"That's what universal amnesty is all about," she said.

"Well you're *never* going to hear that from me!" Rusk said furiously.

Probably not. "Yet at the present time the issue is turned on its head," says Reston. "Those who planned our involvement in Vietnam, who devised our inhumane concepts of devastation, and who executed the technological holocaust are walking free among us and many still hold positions of power. Few are asking if they deserve amnesty. Only for them would I advocate a conditional amnesty, the condition being they admit their mistakes."

The Precedents For Amnesty

The United States Constitution does not mention amnesty, but Article II, Section 2 does state that the President "shall have power to grant Reprieves and Pardons for Offenses against the United States, except in case of Impeachment." The power has been used 30 times since George Washington gave a general pardon to the Whiskey insurrectionists in 1795. (See "Amnesties in U.S. History," page 4, AMERICAN REPORT amnesty supplement.)Legislation having a similar effect has also been passed seven times by Congress although never labeled an act of amnesty.

Abraham Lincoln's amnesty for soldiers of the Confederacy was cited by a pro-amnesty editorial in THE CHRISTIAN CENTURY (Nov. 24, 1971) as a "precedent for an act of amnesty today." But as they wisely noted, President Nixon is not Honest Abe and appeals such as theirs tend to be "stigmatized as the crying of liberals and bleeding-hearts."

Assuming the President survives Watergate it becomes even more ironic that granting an amnesty provides him with an unequaled means of fulfilling his 1968 promise to being us together.

The President must be sensitive to the fact that various countries have granted post-war amnesties, too, both to their "enemies" and their own citizens alike. For example: France, Norway, Germany, Belgium, Japan, and the Netherlands

granted amnesties to persons engaged in compromising activities during World War II.

Early this year Czechoslovakia announced an amnesty for people who left the country illegally after the Soviet invasion of 1968, including large groups in the United States, Canada, Australia, and Western Europe.

Within 24 hours of the election of Australia's new labor government, Prime Minister Gough Whitlan granted a total amnesty to all 9,000 Vietnam war draft resisters. This in a country that has often worshipped the military, and whose only national celebration is ANZAC (Australia-New Zealand Army Corps) Day, commemorating Australia's role in two world wars.

As one final example the exiles often point out that Willie Brandt "deserted" his country during World War II and spent 14 years in Scandinavian exile. Today, of course, he is Prime Minister of West Germany.

But these precedents are of little consequence to the resisters unless they are matched by comparable action in Washington. Without amnesty they will be forced to eventually become citizens of other countries in order to have civil rights, including the right to travel. Among the exiles, passports are expiring and passport applications to the U.S. consulates in Canada, Britain, France, and Sweden are being denied. The 500 deserters in Sweden, for example, will remain stateless persons, trapped in a small country that speaks a difficult language.

Although they have been well cared for, I estimate that at least 80 percent of the men there do not wish to become Swedish citizens or spend the rest of their lives in Sweden. For the time being they are considered refugees admitted under a policy of humane asylum, but ultimately they want to secure their rights as human beings and to do that they must choose Swedish citizenship or wait for amnesty to restore their rights at home. "Why," they ask, "should there be 500 American prisoners of war in Sweden when the 500 American POW's, who have participated in an illegal and immoral war, have returned from Hanoi?"

You victims of conscription!
You victims of the draft!
Mark well and act accordingly:
Where justice rules
And morals prevail,
Each one is free to be a martyr
Of his own ideals.
But no one shall be forced to die
For the ideals of others!
For this is murder.

—Denis Diderot

As Roger Williams became involved with other American war resisters exiled in Canada it became apparent to him that although their protest against the United States—their "politics of anger and frustration"—fit into the **anti** category, the story when fully understood was very *pro* — optimistic, promising, "essentially a positive statement. There is nothing negative, nothing sad, nothing tragic about young men and women consciously choosing freedom over enslavement, a new country over prison, and life over death; and even though many Canadians, American reporters, and even older exiles feel a genuine sadness when they encounter an 18-year-old deserter or draft resister, at the root of this grief is the knowledge that the state of affairs in the United States today is such that men this young have had to flee—that the tragedy lies not with the fleeing but with what is being fled."

Although he didn't say it when he wrote *The New Exiles,* Williams now believes that perhaps amnesty really isn't the issue at all. Agreeing with Reston he says: "The problem is that the U.S. must somehow, someday, repudiate the Vietnam War and the men who made it, after which the problem of amnesty no longer exists. The problem is that the war resisters prematurely repudiated the war and the warmakers."

I doubt that our country will repudiate Vietnam for a long time to come. Instead, it may be that a majority of the people, under the flag-waving leadership of Mr. Nixon, will repudiate us, the anti-war veterans, the resisters, and those citizens considered to be liberal or left of center in American politics. Ironically then, we who opposed a war the American people did not vote for, and did not want, could still become the scapegoats for the Vietnam disaster.

Mr. Nixon has already engaged in what the St. Louis Post Dispatch called "the meanest kind of demagoguery" when speaking of the war resisters. With more of the same, amnesty could become an academic question.

We who grew up believing in America's basic goodness have had those beliefs shattered and blown apart before our eyes in Vietnam (not to mention Watergate). But we have learned by this experience that our country is a nation of dichotomies. One side of the American character often displays a decency, a humanity, a fairness, seldom so widely exhibited in other lands. But often on the other side is arrogance, vindictiveness, and massive ignorance.

Exile has educated the war resisters as Vietnam educated us who fought there. Like the resisters, we are people altered by events, by history, war having made us into what we are not. To take it a step further, war has perhaps made us something

better than we were. Few, if any, among us are leaders. Few have had political backgrounds. But we share among ourselves now—vets and exiles alike—a common "politics of experience," making us determined to alter history as it has altered us. In that sense, we are now "political" and we are dangerous to the traditional polity of America. I think it was awareness of the radicalization process most Vietnam-era veterans and resisters have gone through that contributed to Watergate and drove the government to heavily infiltrate VVAW with FBI and CID agents.

Althougn America is stuck with its anti-war veterans, the war resisters and those with less than Honorable Discharges quite simply may not be people to whom America wants to restore full legal and civil rights.

In a nation as divided as ours, amnesty is not likely to be decided soon, but America will have begun to find itself—will have begun to come to terms with the tragedy of Vietnam—and to extricate itself from a recent terrible past, if it can establish one form of military discharge and allow the war exiles to return as free citizens (at best, to welcome them home—like the POW's—as patriots.) Yet even that will only be a beginning.

AMERICANS FOR AMNESTY

A NATIONAL CAMPAIGN

Millions of Americans actively opposed the war in Indochina. For hundreds of thousands of them their protest brought them into conflict with the law. Americans For Amnesty is working to obtain universal, unconditional amnesty that will restore their full legal and political rights.

We choose to focus our attention on three specific groups in need of amnesty--over half a million Americans victimized by their own government:

1. Those men who refused to cooperate with the Selective Service System and resisted the draft,

2. Those members of the military who have been charged with deserting the Armed Forces,

3. Those veterans who received less than an Honorable Discharge.

For all those resisters who have been incarcerated in civilian or military prisons (or are subject to prosecution); for those exiled because of their opposition to the war; and for all those with a less than Honorable Discharge, we seek universal, unconditional amnesty and a clearing of records, with:

NO alternative service
NO other punitive measures
NO case-by-case judgments.

We are working both independently and in coalition with others in a national amnesty campaign--

TO EDUCATE AMERICANS ABOUT THE ISSUES involved in the amnesty debate.

TO PROVIDE INTERIM SERVICES for the families of those needing amnesty.

TO BUILD VISIBLE PUBLIC SUPPORT FOR AMNESTY in every community.

TO FOCUS CONCERN and political pressure to obtain amnesty.

235 East 49th Street, New York, N.Y. 10017 (212) 371-7080

THE MILITARY ORDER OF THE WORLD WARS,
Washington, D.C., March 19, 1974.

HON. ROBERT W. KASTENMEIER,
Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: We would like to avail ourselves of this opportunity to commend you for opening discussion for the Nation on this very difficult subject of amnesty for draft evaders. The Military Order of the World Wars opposes general amnesty. I enclose the most recent resolution passed by the Order in national convention assembled.

We did not avail ourselves of the opportunity you offered to testify before your committee because we felt that we could say nothing more than what was said by the Defense Department representative, with whom we concur in every detail.

It might be helpful to paraphrase our resolution. The ethical principles of our Order are the same as those of our Country. We believe in and subscribe to a higher order, along with most men of good will who are considering this problem. The real difficulty lies in how we support those higher principles. We believe that this Nation with its Bill of Rights offers the greatest hope for civilized man. We believe that the history of our military conduct, when it has been necessary to engage in war, reflects the humanitarianism of our people—as much as is possible when engaging in the barbarism of war. We feel that the survival of this Nation is a paramount consideration.

The burden of war as it has been conducted up to now has fallen on the young. Generation after generation of young people in our Country have accepted this responsibility and brought us to be the great Nation that we are. Thus it is a sacred duty of citizenship to serve when our Country calls. To do otherwise even on humanitarian grounds, does an injustice to those who have served and those who will serve. Perhaps Alan Seeger said it best in his poem, "Flanders Field." It read:

to you we throw the torch
be yours to hold it high—

We cannot bring ourselves to feel that those men who left the country to avoid the tough decisions held the torch very high nor are they entitled to reenter. They made their choice. Surely they must have the courage to live with it.

Very truly yours,

ROBERT N. TYSON,
Brigadier General, USA–Ret.,
Chairman, Legislative Committee.

Enclosure.

RESOLUTION NO. 9. OPPOSITION TO GENERAL AMNESTY FOR DRAFT EVADERS

Whereas the fighting in Vietnam and Southeast Asia has changed its pattern and some prisoners of war have been released and amnesty is now being advocated by some for draft evaders and deserters; and

Whereas millions of young Americans have served honorably in the armed forces under estremely difficult conditions and many of these were wounded, injured or killed, or are still missing, the hard duty that the draft evaders and deserters avoided being performed by other young men who accepted their responsibility and duty to their country: Therefore be it

Resolved, That The Military Order of the World Wars in National Convention assembled, declares its opposition to any action, by the Congress of the United States or any other body or person, which would grant general amnesty to those who have unlawfully avoided military service or have deserted therefrom.

Certified official, 10 August 1973.

A. R. BROWNFIELD,
Brigadier General, USA-Ret.,
Chief of Staff.

STATEMENT ON AMNESTY BY DAVID WESLEY BROWN, PROGRAM SECRETARY, PRISONER VISITATION AND SUPPORT COMMITTEE

I am one of the many people who offered and requested to testify before House Judiciary Subcommittee #3 hearings on amnesty, but for whom the Subcommittee had too little time. I made that offer and request because I am currently working as Program Secretary of Prisoners Visitation and Support Committee, an or-

ganization whose thirty-six volunteers nationwide, and two National Visitors, visit war resisters in federal and military prisons. I am also an ex-GI and an ex-prisoner—one of those people whose past actions and future rights were subject to much debate in the recent oral testimony before this Subcommittee.

Unfortunately, the Subcommittee heard testimony from only two of us whom an amnesty—or lack of amnesty—would affect directly. That is why I have considered it extremely important to submit this written statement for the record. Amnesty is necessary partly because so many people refused for so long to listen to resister's voices. I hope that the dearth of resisters allowed to testify on amnesty does not mean that this Subcommittee intends to close its ears as well.

I write primarily from my own experience as a GI war resister and military prisoner in 1966, 1967, and 1968. Though my experience was a mild one for those times, I faced constant intimidation from the moment I mentioned my newly crystallized conscientious objection. The sergeants and officers over me made every effort to dissuade me from pursuing the perfectly legal course of applying for discharge; when I persisted, they sought to water down my search for legal redress. In the end, I spent over sixteen months in the Fort Dix stockade and the Fort Leavenworth military prison, and received a Bad Conduct Discharge.

My experiences, and those of the war resisters with whom PVS has had initmate contact, demonstrate that a universal, unconditional amnesty would not merely wipe the legal slate clean for thousands of Americans who have been made to suffer for their war resistance. Because the conduct of government employees and agents was often illegal, and not seldom cruel; because discharge requests were illegally turned down, and induction orders illegally issued, forcing many to disobey the law in order to maintain their rights under the law; because less-than-honorable discharges, stigmas for life, were the military's means of dealing with GIs who were troubled by the war, amnesty is for hundreds of thousands the first step by which the government can seek to right its own wrongs.

But I should begin by telling my story:

On May 17, 1966, I entered the army, becoming PVT–E1 David W. Brown, RA11797464. I was two days from my twenty-first birthday, and had gotten married four days before. That coming September, I would have begun my third year of college, after taking a year off and working as Welfare Director for the city's Salvation Army post.

The RA in my serial number indicates that I enlisted; it does not indicate that I signed up under pressure of imminent induction. Since I had to go in, I enlisted to ensure that I would serve as a chaplain's assistant, for I at that time intended to become a clergyman. At the time, I had no particular feelings about the Vietnam War. I suppose I thought I should be supporting it, for I had recently been shocked to come across an issue of I. F. Stone's Weekly, containing strong criticism of the war, in the home of a respected friend.

I recall also that I had seriously considered whether I should file a conscientious objector claim with my draft board. Were my object merely to avoid service, I might have done so, for I was within a few months of reentering college; filing a claim would have created a delay, enabling me to regain my student deferment. But I had concluded that I was not a conscientious objector: though war is never a good thing in itself, it appeared from history that war had sometimes been necessary, and had achieved desirable ends. If my government told me I had to fight, then I had to fight.

Within two weeks after I enlisted, my beliefs changed radically. I had been, and continued to be a Christian, but I had believed before that it was possible, and sometimes necessary, to serve God in the military. My first two weeks in the military, which included my introduction to Basic Combat Training, convinced me that being a soldier was incompatible with being a Christian. Perhaps I should have known before going in that the purpose of Basic was to teach new GIs to kill, and to inculcate attitudes that would make them willing to take human life. But I had been fooled by the popular image of Basic as a he-man version of Scout camp, and by phrases in recruiting literature about learning to "fire a weapon" and "handle a bayonet." The reality was more graphic: rifle targets were shaped like men, and trainees repeatedly shouted, "KILL!" as they learned to "handle" their bayonets.

I could not believe that I should allow the murderous Spirit of the Bayonet to co-exist in my heart with the loving Spirit of God.

My doubts were not uncommon; my decision was. I decided that I would not train, even if it meant disobeying orders. I told my Platoon Guide, who told the Assistant Platoon Sergeant, who told the Platoon Sergeant, who came and talked with me. Our conversations went as many other such conversations between Ser-

geant and troubled GI have gone; he listened, tried to talk me out of my decision, got angry when he failed, and concluded by pointing out the window toward the stockade and shouting, "We have a place for (derogatory epithet) like you—barbed wire city!"

SFC Palmer would have said he had counseled me; I say that he argued with me, then threatened and intimidated me. Many other GIs would say the same about the "counseling" they received—including many who did not pursue their beliefs in the way I did, but simply went AWOL.

The threat worked, temporarily. The next morning I did fall out for training, having decided that I would feel my way through the first two weeks of training—classroom work, first aid, drill, and calisthenics. But I had called my wife and my parents to tell them I could not train, and they took their own steps to help me resolve the dilemma.

My father immediately phoned the chaplain, and asked him to speak with me. So, when the first day of training ended with the chaplain's orientation, Chaplain (MAJ) Lewis kept me in his office after the company had gone back to the barracks. He assured me that going through training would be the best course, and that I would find that is wasn't really so bad. He also pointed with pride at the picture, on his desk, of his son graduating from Infantry Officer Candidate School. He was carrying out his Military Chaplain role: to provide spiritual comfort and solace so that those who think they maybe shouldn't kill will know that it's all right with God.

My wife went through different channels. We knew some civilian conscientious objectors, and she called them. One of them told Marion about the Central Committee for Conscientious Objectors; she made a late-night phone call; and CCCO immediately sent me a *Handbook for Conscientious Objectors*, a memo on "Conscientious Objectors in the Armed Forces," and a copy of Army Regulation 635–20, "Personnel Separations: Conscientious Objection." AR 635–20, which neither my platoon sergeant nor, more surprisingly, the chaplain, had mentioned to me, provided a procedure by which people who became conscientious objectors after entering the army could apply for discharge. The regulation, the memo, and the Handbook arrived on the third day of training. I read them overnight, and acted first thing the next morning.

Feeling hopeful that my dilemma could be worked out reasonably, and that I would eventually perform two years of alternate service as a conscientious objector, I went to the First Sergeant to tell him that I was applying for discharge under AR 635–20. But 1SG Cole snatched my copy of the regulation from my hands, demanding, "Where did you get this?" He read it, sputtered, and went to my file. "Sorry, Brown, it doesn't say here that you're a conscientious objector." I explained that of course my file didn't say that—I hadn't been a conscientious objector when I signed up. But didn't the regulation say I could apply for discharge, and didn't it say that someone applying for discharge should be removed from training and assigned to duties in the "minimum practicable conflict with his beliefs"? He recognized that (how many First Sergeants have refused to do so?), but said that I had to provide all the information and answer all the questions in the regulation before I could be taken out of training.

I set myself a deadline: ten days later, when the company was scheculed to go to the rifle range to really begin learning to kill. And I met it. That Monday morning, as my fellow trainees lined up to go to the trucks that would take them to the bivouac area, I took my sheaf of papers to the Orderly Room, and handed them to 1SG Cole. I was half expecting to be assigned to KP from that moment on—but I was not to be so lucky. My application, 1SG Cole said, was not typed and in the proper form, so that I really hadn't officially applied for discharge yet, and I would have to go to the rifle range with everyone else.

After he assured me that the company clerk would type my application as soon as possible (a rare courtesy), I went. Monday, there was no actual firing; Tuesday, I was on KP, so I thought things would still work out. But Tuesday night, 1SG Cole and the company clerk came out to talk with me. The clerk was refusing to type my application in its present form, they said, and they demanded that I revise it. It was too long; it had too many quotes; it obviously was not my own thinking. "But most of the quotes are from the Bible, and I think it's the best application I can make, and I want it the way it is," I told them. They only repeated their demand.

Perhaps it is now clear why I am going into so much detail about my attempt to obtain a conscientious objector discharge. I had every advantage a GI could have had. I am white; my schools had taught me to read and write fairly well; my family did what it could to help me; and I had received the best assistance that CCCO,

then the only group even attempting to cousel GIs, could give me. I had my own copy of the discharge regulation, and I had studied the CCCO memo and *Handbook* so that I knew something of my rights. But even at that, I faced a new roadblock every few days, thrown before me to prevent me from following a perfectly legal course of action prescribed by regulations which the officers and NCOs over me had a duty to follow. I was able to persevere, in large part because I still had faith that established procedures could work for me, and because of the support and advice I was receiving.

Most GIs do not have that faith—nor have they any reason to have it. Neither do most enjoy the kind of outside contact which I had. Most GIs who became war objectors are in the military longer than I was before their beliefs change, so that they know too well what to expect of sergeants, chaplains, and commanding officers. My experience shows that going AWOL as an act of war resistance—for instance of filing a conscientious objector claim—is a rational and honorable course of action. My experience also provides a hint as to why a Pentagon study showed that a very small percentage of returning AWOLs told their commanding officers that they had gone AWOL for moral or political reasons. All they would have accomplished had they done so would have been making a point to someone who wasn't likely to care. More likely, they would be letting themselves in for worse treatment than they could already expect for simply being AWOL.

At my first court-martial, my defense counsel (not an attorney—he was a 1st Lieutenant of the Infantry) told me as much. He suggested that I plead guilty to refusing an order, and that I make no statement about why I had refused. Better to let the officers sentencing me—officers of my training brigade—think I was just a mixed-up trainee, than to risk extra punishment by telling them I refused because of conscientious objection to training. I was willing to go to jail, but did not want to ask for extra trouble, so I followed his advice. The lieutenant may have been right—the court sentenced me to only three months of a possible six.

But I was speaking of that Tuesday night in the Command Tent at the bivouac area by the rifle range. I was faced with three choices: let the company clerk revise my application to his liking, resign myself to doing what each day I abhorred more, or prepare to refuse orders and go to the stockade the next day. Putting a man in that kind of dilemma is nothing short of intimidation, though at the time I believed that 1SG Cole and the others thought that they were following regulations and trying to help me. I resolved the dilemma by reducing my statements to outline form, which the company cleark agreed he would type.

Wednesday, it was back to the rifle range. We fired that day; I am still a little ashamed that I took part. Thursday morning the same. After lunch, 1SG Cole appeared, with papers for me to sign. Greatly relieved, I began to sign, then noticed a typing mistake. I looked over the papers carefully, and saw many mistakes—misspellings, incorrect dates, form that bore no relationship to the letters and numbers in either my outline or the regulation. So I started going through, making ink corrections and initialing them, as I had learned was proper military form. But 1SG Cole had no patience for that process, and demanded that I simply sign all the copies, or go back to training for long enough to get it re-typed, which might take a while. I signed.

Things got better after that. They immediately took me out of training, assigned me to KP (permanently, they said), then put me to work two days later at a typewriter in the Orderly Room. I continued to live in the same barracks, and had all the privileges—and more—that my fellow trainees had. When the company graduated, I still remained in the barracks, awaiting action on my discharge request, through a second complete cycle. During that time, I became more and more like an ordinary soldier working as a clerk-typist, and had passes and a leave just like the company clerk.

But there were still roadblocks. In submitting my application, I had to talk again with Chaplain Lewis. He was quite put off that I had decided to seek discharge, and told me in no uncertain terms that I would not get out, and would spend five years at Leavenworth. He also recommended that my application be turned down, though he had made no attempt to find out what I believed. A conversation with my company commander was no more productive, except that he became more visibly angry, and wrote in his recommendation that I was a victim of a "Pacifist conspiracy." I suppose he was sorry for me.

The final roadblock, which I still believe, perhaps naively, to have been unintentional, arose when I received orders to go to Fort Benjamin Harrison for advanced training as a stenographer. Since I had not completed Basic Combat

Training, such orders were clearly absurd, so I went to the personnel office to wonder about them. A clerk there checked my file—and found my discharge request, which had never been forwarded to Washington for an official decision. Unfortunately, discharge requests getting "lost" in that way was quite common. I was one of the lucky ones who found out about it, partly because I knew that AR 635-2- required that a GI be retained in his original unit for processing.

That is probably enough detail about my first discharge request. That request, which cost such constant effort even to submit, was turned down, as were 96% of all army conscientious objector discharge requests that year. I was placed back into Basic Combat Training, in a different company, and immediately refused a sergeant's order to accept a rifle. A week later, that first court sentenced me to three months, and the brigade commander suspended the sentence to give me another chance to be a good soldier.

COL Musser took that action despite a long conversation with my wife and me, in which I explained my total objection to military service, and Marion reiterated her support. Suspending my sentence was really no favor at all. Within a few days, after being transferred to another training company, I again had to refuse an order to accept a rifle. This time, I disobeyed a captain, and could have been sentenced to five years in prison. But that charge was dropped, on a technicality arising from the captain's apparent belief in my sincerity.

I was then ordered into the stockade to serve the original three-month sentence. Upon my release, I made it clear that I would again refuse to train. Rather than force me to disobey another order and go back to the stockade, the brigade suggested that I apply for discharge a second time, and promised to recommend approval. They kept their promise, and the company commander also recommended approval, but post headquarters did the opposite. And so, while I worked on as practically a company clerk, my second request for discharge went up and down the channels to the Pentagon, to return, "Denied." That year, 95% of all conscientious objector discharge requests in the army met the same fate.

That period, from January through May, 1967, while my second request for discharge was being turned down, was an agonizing time for me. It had cost me an effort to decide to even submit that application, because I knew that it would mean more months doing work that was against my conscience, as far removed from the battlefield as I was. On the other hand, the brigade had been unusually generous in offering me the opportunity, when they could have forced me to immediately disobey another order. And I certainly did not mind the reprieve from being locked up again. So, I chose to be patient—perhaps the official channels would work properly this time, and I would be discharged as a conscientious objector.

Most GIs, of course, were not so patient. They didn't wait around for repeated bureaucratic maneuvering, but simply went AWOL. My course may seem, especially to people such as Congressional Subcommittee members looking at it in retrospect, to have been the more honorable and idealistic, and perhaps even the more courageous. And I'm not sorry I took the course I did. Nonetheless, I can't but wonder if those who went AWOL—those who said, "No more!" and acted on that—weren't the truer resisters, and the more rational in their decisions. In all I gave nine months of solid work to the military after coming to understand that doing any military work at all would contradict my most deeply held beliefs. Those who went AWOL gave *no* more, from the moment they left. In exchange for those nine months I put in, the best I could have hoped for would have been individual vindication of some sort, an official statement by the military that I was a sincere conscientious objector by their standards. What a poor trade! Those who left were not seeking recognition or official approval. They wanted out of an intolerable situation, and they got out, without ever asking the warmakers to judge their sincertity as peacemakers. And they succeeded in giving no more time to the military they abhorred.

But I waited, increasingly troubled by even wearing the uniform. In April, I was ready to take it off forever, but my lawyers advised me to wait—why put myself in jeapordy when I might be on the verge of discharge? I took their advice, as I had when deciding to submit the second discharge request. Besides, I had another hope: the ACLU had taken my case, and was seeking a writ of habeas corpus in federal court. Such writs became commonplace by the late 1960s, but at that time no federal court had even accepted juridsiction to review military decisions in conscientious objector discharge cases. The District Court judge

had in fact refused jurisdiction in my case in December, 1966, but the case was then on appeal.[1] I might have gotten out at any time.

I didn't get out. In the last week in May, 1967, I went to the Brigade Message Center on some errand, and saw, on top of a pile, a telegraphic message from the Department of the Army to my commanding officer. It said that my request for discharge had been denied.

2LT Havekost, the company commander, knew of my beliefs. As Executive Officer in February, he had handled the initial processing of my discharge request. Also, I had been working in his Orderly Room, and we had occasionally talked about my stand. I showed him the message from DA. I showed him also a statement I had happened to write earlier that week, which explained that I could no longer wear my uniform, nor do any work at all. I had waited too long and given too much—my response to not being discharged could only be complete non-cooperation.

Since it was late Friday afternoon, I asked for a weekend pass, so that I could say good-by to my wife. Lt. Havekost gave me the pass. My lawyers then convinced him to extend it to a leave, so that they could attempt to convince Brigade officials to let me seek an unsuitability discharge. I returned the following Thursday afternoon, hoping to meet again with Chaplain Lewis (by then a Lieutenant Colonel) and convince him to help me get out. But Chaplain Lewis would not see me.

Friday morning, I went to the Orderly Room, dressed in civilian clothes, I signed in from leave, and Lt. Havekost called me into his office. He called the senior NCO in as well. "Brown," he said, "I am giving you an order to go back to the barracks, put on your uniform, and report back here to your usual place of work in the Orderly Room." In reply, I again handed him my statement. He looked it over, then went through the necessary rituals to verify that I had hear his order, that I understood, and that I was refusing to obey. That done, Lt. Havekost said he would have to put me in the stockade, and told me to wait for him in the orderly room. But he did allow me to go, with an escort, to the pay phone in the barracks, to call my lawyers and my wife.

Late in the morning, Lt. Havekost returned, wearing a .45 pistol. We got into his car, and drove to the stockade. He turned me over to the guard at the gate, and quickly left. I went through the initial searches, then was sent to draw my bunk, mattress, and toilet articles. I was then assigned a place in a cell block/barracks.

I did not go to lunch, because I was fasting as a further expression of the total stand I had been forced into. After lunch came headcount. I refused to join the headcount formation, and was relieved when the guards took no action. They decided to count me as I sat on my bunk, as they counted other prisoners who had official clearance to stay in the cell block. Then, work call, and again I remained on my bunk, sitting quietly.

Before long, two guard sergeants came through the cell block, rousting out stragglers. They saw me on my bunk, and wondered why I wasn't at work call. I tried to explain, but fear held my words in my throat. Perhaps I mumbled something, perhaps I said nothing. So the sergeants pulled me from my bunk, after telling me I had to go to the Control Room with them. I remained limp. The two men tried to stand me up, but failed, so one of them bent my hand and wrist far backwards, telling me he would break my fingers if I didn't stand up and come with them.

I gave in then, and we went to the Control Room, with one segeant holding each of my arms as I half walked and was half dragged through the compound. They left me in the Correction Officer's office.

When CPT Miller, the Corrections Officer, came in, I regained my tongue I told him of my beliefs, and explained that I could do no work, not even in the stockade, for I knew that even prisoners' work contributed in its own small way to the combat effort. When CPT Miller replied that I would not have been assigned to work, but would only have been called out for continued processing-in, I replied that I believed I should have not been imprisoned in the first place, and could not participate in any stockade routines. Finally, he gave me an order to go to work call, and I refused.

CPT Miller called a guard, and ordered me placed in Segregation—the military's polite term for solitary confinement. This time, I went along. In segregation, I would be removed from the stockade routines which I was refusing to participate in.

---

[1] Eventually, the Circuit Court did accept jurisdiction, making mine the first case ever to be reviewed in that forum. But the court did not grant *habeas corpus*. See Brown v. McNamara, 263 F. Supp. 687 (D.N. J. 1967), aff'd 387 F.2d 150 (3d Cir. 1967).

Once in my solitary confinement cell, I contemplated my situation. In the space of a few hours, I had been charged with disobeying two orders from Lt. Havekost (that was how he wrote it up—one order to put on my uniform, and a second order to report for work), with disobeying an order from CPT Miller, and with disobeying a post regulation about wearing civilian clothes while in trainee status. That meant that I was facing fifteen years and six months of prison, simply for insisting, contrary to the judgment of the Department of Defense, that I was conscientiously opposed to participation in war in any form. Fifteen and a half years. I knew—Marion and I had talked about it—how people could grow apart in even a few years, and that being in prison for that long would probably mean starting a completely new life when I got out. But I tried to draw strength from the moral support I knew I had on the outside, from the tradition of non-violent resistance of which I felt a part, and, most important, from the Spirit which I sought to affirm in my actions.

But my mediation was cut short. I was being taken to the Control Room, called to see MAJ Ford, the Confinement Officer. The problem was my refusal to wear military clothing. Ignoring the fact that perhaps a third of the prisoners had no uniforms, since they had recently been arrested while AWOL, MAJ Ford insisted that I put on a uniform. Once again, I explained my position, explained that I had walked the second mile, and could do no more. MAJ Ford did not give me another order—instead, he told me that if I didn't put on a uniform myself, he would have one put on me.

I spent the next few minutes in the holding cell near the Control Desk, while a guard went to the stockade supply room to get me a uniform and boots. When the guard returned, a sergeant took the uniform, led me from the holding cell into an office, and closed the door. Another sergeant was already there. One of them was the man who had threatened to break my fingers.

"Brown, why don't you just put this uniform on? It's only work clothing; it doesn't mean anything. You know the rules here."

Did I try, again, to explain what I believed? Maybe, maybe not—but the sergeants soon understood that I would not take off my civilian clothes and put on that uniform.

I stood quietly, arms at my side. One sergeant stood in front of me, and began to unbutton my shirt. I crossed my arms over my chest to obstruct him. So the two of them moved to stand half behind me, one on each side. They took hold of my shirt and undershirt collars. At a signal, they ripped downward, stripping the shirts from me. Then, they came more to my front, to grip the waistband of my trousers. Again, they tore, this time with more difficulty, until I was left standing in my briefs, shoes, and socks.

Now, the sergeants held up the fatigue shirt, and put one of my arms into a sleeve when I remained motionless. While they put the other sleeve on me, I wriggled the first one off. They replaced it, a little more roughly, and shackled my wrists to be sure the shirt could not come off again. Then they suggested that I cooperate with putting on the trousers. We were all sweating by that time, and they were puffing a little.

I offered no help with the pants, but again remained standing quietly. Hardly knowing what had happened, I was suddenly lying on the floor, with a sergeant's boot or knee on my neck, applying enough pressure to keep me from struggling. The sergeants wrestled the trousers onto my legs, stood me up and pulled the trousers up, and finally buttoned the waistband and roughly tucked in my shirt. They had stripped me of my shoes and socks in the process, and now they forced the boots—fortunately too large—onto my feet. While they did so, I managed to unbutton the fatigue trousers and some shirt buttons despite the handcuffs To no avail, however. The sergeants handcuffed me behind my back, re-fastened the uniform, and took me to stand in front of the control desk while a guard came from Seg to get me.

Back in the solitary confinement cell block (I had walked, resisting a temptation to kick off my boots as we crossed the compound), three guards stood around me. One said, "We're going to take your handcuffs off, but don't try to take off your uniform, or they'll go back on." My wrists were freed, and I began unbuttoning my shirt. One guard grabbed my arm, pulled it around behind me in a hammer-lock, and said, through clenched teeth, "You do that again, and I'll break your arm." A second guard buttoned the shirt, and I was released.

But my hands went to the buttons again. Again, my arm was grabbed. I was thrown to the floor on my stomach, and was held with a knee in the back, and by my arms and legs. One guard reached to my face and took off my glasses—a

rare touch of mercy, perhaps intended to make sure that there would be no broken glasses to tell tales. I heard puffing and muttered commands, and felt my wrists and ankles being bound, then drawn together at the small of my back, then tied there. Then, the guards picked me up by my arms and legs, and carried me, my face inches from the concrete floor, to my cell. In case I should fall off my bunk—a steel plate fastened to the wall and hanging by two chains—they put the mattress on the floor next to it.

"One, two, three, heave!" I felt myself swinging, just missing the floor, and then flying through the air toward my bunk, finally landing there safely. "We'll take off the traps when you're ready to leave your uniform on," I heard. The cell door swung closed, and I was alone.

That was all the physical brutality that was ever used on me. Most GIs who resisted, especially if they simply went AWOL, experienced less. Some experienced much more, particularly Black or Spanish-speaking GIs, or those who organized anti-war activities among GIs What I experienced was symbolic of the physical and mental brutality that all experienced. I refused to conform my identity, either internally, in my beliefs, or externally, in my actions and my clothing, with what the military wanted to make of me. So the military stripped me, imposed its image on me, and bound me, hand and foot, to ensure that I could not break free. That is the military way.

That is conscription's way as well, and it is the prison way. And, if this country fails to declare a universal, unconditional amnesty for those who resisted US involvement in the Indochina war, that same process that left me in straps on a steel plate bunk in a solitary confinement cell will be officially affirmed as the American way.

For the process goes on, most obviously with the several hundred civilian war resisters now in prison or on parole or probation, and with the GIs still in stockades, brigs, and military prisons for disobedience and for AWOL. Nor does it end there: half a million bad discharges still hang on the necks of GIs, including me, who resisted, and thousands of felony records weigh down those who refused even to enter the military. And the same fate still awaits tens of thousands who now struggle, with more or less success, under the burden of enforced isolation, and even namelessness, in exile or underground.

Do not think that I am asking for pity. I am not pleading. I am standing before you, saying that what this country has done, and is doing, to Indochina war resisters, is cruel and wrong. An unconditional amnesty, which releases all war resister prisoners and halts all prosecutions, military and civilian, for war resistance; which expunges all criminal records, military and civilian, resulting from acts of war resistance, including AWOL and violations of UCMJ Article 134 as well as disobedience; which upgrades all Vietnam Era bad discharges; and which offers exiles the opportunity to reclaim their US citizenship, could put an end to the cruelty, now.

It is hard for me to understand how anyone can consider anything less. By the end of direct US involvement in the Indochina War, the majority of Americans, including members of this Subcommittee, saw and said that US actions in Indochina had been illegal and immoral, and called for the speediest possible halt to those actions. That implies that those who had resisted the war, who had in one way or another refused to fight or had attempted to disrupt the war machine, had judged correctly.

To call US actions in Indochina illegal and immoral also implies that those who participated, participated in a crime. It especially implies that, at some point, whether by neglect or by design, the officials who made the decisions and gave the orders broke laws. And what of those crimes? For the most part, we have all decided that the situation was too complicated to assign particular blame—though, in contrast, tremendous amounts of taxpayers' money has been spent on investigations and secret grand juries aimed at uncovering numerous "conspiracies" by resisters to commit acts which never even took place. Where particular blame could be assigned—for example, an Air Force general who illegally ordered illegal bombing raids (which killed how many people, destroyed how many homes, wiped out how many fields?), and who then falsified reports to hide those raids—the result has been, not punishment, but vindication and reward. General Lavelle was allowed to retire, and then was awarded massive disability payments in addition to his already large retirement income.

The realities of US conduct in Indochina also call into question the repeated demand that those who resisted do some sort of compensatory service, to make up for the service which they refused to perform when they refused induction or

left the military. I do not want to make villains of the GIs who did not resist—they were subject to immense pressures. But, with all due respect, we as a nation must deeply question whether participation in the Indochina War was, in the long run, service to this country. And, we certainly must not demand that resisters make up for not having killed. Even those who demand some sort of compensatory suffering—for Vietnam GIs suffered much and suffered long—ought to recognize the degree of suffering which most resisters have already experienced. Let no one say that resistance was an easy way out, whether that resistance involved open disobedience of laws or orders, or was expressed by entering exile or an underground existence, or was, as in most cases, a long, tortured series of hard times in a military that refused to listen, and that treated maladjustments, absenteeism, and attempts to seek and express the truth, as crimes.

Personally, I would refuse to perform any kind of forced service in exchange for full restoration of my civil liberties. On the one hand, this country has already exacted the price of two years of my life, including over sixteen months in military prison. But more important, I would consider forced service an attempt to wring from me, and from all resisters, an admission that it was all right for the US to draft and order people into the Indochina War, and that maybe we should have gone after all. I will not make such an admission, in any form.

For it is important to remember what it was that we who resisted did not do, and what it was we were trying to stop. We were not in the skies over South Vietnam, North Vietnam, Laos, Thailand, and Cambodia, raining death and ecological destruction, and driving people from their homes. We were not on the ground at My Lai and so many other hamlets, carrying out massacres and sweeping through free-fire zones. We were not afloat in the mobile sanctuaries of aircraft carriers and other warships, sending off planes and firing guns that brought further destruction to beautiful Southeast Asian lands. And we did not order tens of thousands of young Americans to their deaths—we did not issue illegal induction orders that young men obeyed because they could not know of the illegalities, and because they trusted their country; we did not wrongfully deny discharges; and we did not order Hamburger Hill to be retaken at the cost of hundreds of lives, only to be abandoned a few days later as insignificant.

It is not necessary to investigate crimes such as these, which so many Americans committed for so many reasons at such great cost to the victims. It is enough to know that they existed, and to acknowledge that they existed, and to ensure that they will never happen again.

But in the light of such things, why is there any question of welcoming back into full citizenship every person who did what he or she could to stop those crimes while they were being committed. In light of the implied amnesty—and more than amnesty, in many cases—which those who carried on an illegal and immoral war have received, how can there be any question of amnesty for those whose crime is that they could not be forced to become criminals. It is a sad, topsy-turvy world indeed, in which fine questions of motivation and morality are raised about those who removed themselves, by whatever means, from the horror, while those who created and carried out the horror are honored, promoted, and revered as heroes.

National Student Coordinating Committee for Freedom in Vietnam and Southeast Asia, Statement on Amnesty Legislation

Since 1972 we have surveyed a number of individuals who had evaded the draft by not appearing for induction as ordered by their draft boards. They were located in Europe, Canada and the United States. Since these individuals were selected from among anti-war activists it may be argued that they may not be representative of those who simply wanted to avoid the draft. Nevertheless, it is our conclusion that a significant number of those evading the draft did so prior to or after becoming anti-war activists. We consider it safe to conclude further that those we interviewed were representative of these activist types.

Unanimity was found on the following points:

(1) They insisted that they are not guilty of any crime. Rather, since they claimed with certainty that the Vietnam war was immoral and illegal, their evasion of the draft was, they believed, consistent with their obligations under the Neuremberg principles. Since they consider the U.S. government guilty of war crimes, they have concluded that those who complied with the draft law are guilty of war crimes.

(2) All indicated support for the North Vietnamese cause and, to varying degrees, expressed sympathy for the social values of the Hanoi regime over those of the United States.

(3) All expressed the view that the present system of government ruling the United States serves only the interest of a small group exploiting the majority. They expressed personal commitment to the removal of that system and depicted their anti-war activities and draft evasions as steps in that direction.

In conclusion, the image projected is that of ideologically motivated individuals seeking to overthrow a system responsible for injustice all over the world and ruled by individuals guilty of "war crimes" in Vietnam. As they see it, the issue is, therefore, not amnesty for them but rather prosecution for "war crimes" of all those responsible for the execution of the Vietnam War.

Since the issue then is really one of whether they, by avoiding the draft, are criminals or the nation's leaders, by carrying out a war in Vietnam, are guilty of "war crimes," we believe the issue still belongs to the judicial branch of government. If the nation's leaders are to be judged as war criminals, then those who need amnesty would not be those who evaded the draft but rather those who complied with it. This issue must be settled for the good of everyone concerned. For Congress to legislate amnesty for one of the parties involved before guilt has been established is a vile transgression of the principle of separation of powers.

While we deplore the views and actions of these individuals we do think that under our form of justice they do deserve their day in court. For Congress to legislate amnesty is not only to deprive them of an opportunity to state their case before the rule of law but also a presumption of guilt before so found by the proper judicial body.

Let's not force posterity to live with the memory that because we feared the charges of these people we deprived them of their judicial rights with legislated amnesty. Should history record this Congress as opting for politics over justice?

Since their cause is by far greater than just evasion of the draft, denying them their day in court would indicate that our system denies due process to those who would alter it from within. Amnesty legislation would thus serve as support for the claim that change can only be brought about by extra-legal means. We regret that their violation of the draft law can be considered to be either a legal challenge to it and to the Vietnam war or simply an opportunistic act of cowardice. It is not up to Congress to assume the latter by legislating amnesty.

Those who would receive amnesty under proposed legislation would include those who insist that amnesty is only a disguised concession by the United States Government to their war crimes charges. Think of how those who served would feel. They served and suffered for the system that many of those to whom Congress would grant amnesty are seeking to overthrow. They fought an enemy that many of those to whom Congress would grant amnesty supported.

Lastly, it was our understanding that as a matter of national policy, the amnesty issue would not be raised until the POW–MIA problem was completely settled. As we all know this has yet to occur. These hearings are, therefore, a vile violation of that demonstration of national resolve on freedom for all POW's and compliance with the Paris Accord's sections on MIA's.

We must show respect for those who served and those who refused to serve for cause (even though the latter may be a minority of those who refused to serve). This can only be done by allowing them their day in court.

We must not allow the issue of criminality to remain moot. It must be settled by the appropriate judicial bodies on a case by case basis.

This is not the time to legislate on amnesty.

General Order No. 152—The General Amnesty

(By Morris Sherman [1])

After the Civil War, draft-evaders and deserters were recipients of President Johnson's amnesty and returned to their normal pursuits in civilian life. "Not true, say the anti-amnesty forces, there has never been a general amnesty following any American war."

[1] The writer, a reference librarian at Rutgers University, is the author of *Amnesty in America; An Annotated Bibliography*, soon to be published by the New Jersey Library Association, 221 Boulevard, Passaic, New Jersey 07055. The preceding article is a condensation of Chapter Six.

Both positions are incorrect. Neither concept is viable under the glaring light of historical research. Yet there is no mention of amnesty for draft-evaders and military deserters in any of President Johnson's four amnesty proclamations. All were directed at the former members of the Confederacy and granted a general amnesty to some and a limited amnesty to others. What happened to the Northern draft-evader and deserter?

In 1863, the North, attempting to smash a reeling Confederacy, especially after Antietam, by instituting the first large-scale military conscription in American history, passed the *Enrollment* Act of 1863, 13 STAT. 731. Militia drafts had been common in colonial and revolutionary times and Secretary of War James Monroe's attempt to conscript an army of 100,000 men for the War of 1812 was defeated in Congress.

Section 13 of the act empowered the War Department to arrest any draftee failing to report, institute a court-martial, and if necessary shoot him for desertion—without ever having taken an oath of allegiance to the military. This, and abuse of the commutation clause of the enrollment act (payment of $300 to exempt one from the draft) provoked massive resistance, not only in the famous Draft Riots of 1863 in New York City but throughout the North, especially in Ohio, Indiana, Illinois and Wisconsin. The draft riots in Port Washington, Wisconsin were equal in intensity, if not in size, to those in New York City.

A test of the act's validity in the Supreme Court of Pennsylvania resulted in a nullification of a federal act; the enrollment act was declared unconstitutional and an injunction granted against its enforcement. A change in the court's personnel led to a rehearing of the case and dismissal of the injunction. *Kneedler* v. *Lane*, 45 Pa. St. 238, 1863. When the government attempted to enforce the draft, 776, 289 names were selected. Of these, 166,284 failed to report. These figures are from the official records of the Civil War, titled, The War of the Rebellion; A Compilation of the Official Records of the Union and Confederate Armies, Series 3, Volume 5, pp. 621–759.

When the war ended, little thought was given to the draft-evader or deserter. The Union had been saved and reconstructing a defeated Confederacy was a problem that loomed larger than all others. On October 17, 1865, Assistant Adjutant-General E. D. Townsend, representing the War Department, signed General Order Number 152, the most sweeping amnesty in American history. The order:

"General Orders No. 152—War Department

"Adjutant General's Office,

Washington, October 17, 1865.

"Hereafter no person shall be arrested as a deserter for having failed to report under any draft, or for any other non-compliance with the enrollment act or the amendments thereto. Any and all persons of this class now held will be immediately discharged.

"By order of the Secretary of War.

"E. D. Townsend,

"Assistant Adjutant-General."

The order presents an interesting paradox. If the draft was unconstitutional, thousands of men died as a result of an illegal governmental action; if it was constitutional, General Townsend's order negates the claims of anti-amnesty groups in today's society that general amnesties have never followed any American war.

This little-known and long-forgotten order, which may be a precedent for a grant of amnesty following the Vietnam War, was not the major thrust of forgiveness after the Civil War. Little controversy, if any, if any greeted its proclamation. Rather, the turmoil was centered around the conflict between President Johnson and Congress over the power to readmit the former Confederates into the political and social mainstream of a unified nation. Nevertheless, the precedent remains.

Statement of the National Council of Jewish Women Submitted to the Subcommittee on Courts, Civil Liberties and the Administration of Justice, of the Committee on the Judiciary, House of Representatives, on Pending Amnesty Legislation

The National Council of Jewish Women is an organization founded in 1893, and now has a membership of over 100,000 members located in communities throughout the United States. Since its inception the organization was committed

to the protection of individual rights and liberties. For this reason the delegates to our last Biennial Convention held in Miami Beach, Florida in March 1973, expressed their support for amnesty and adopted the following resolution:

"I. INDIVIDUAL RIGHTS AND RESPONSIBILITIES

"The National Council of Jewish Women believes that the freedom, dignity and security of the individual are basic to American democracy, that individual liberty and rights guaranteed by the Constitution are keystones of a free society and that any erosion of these liberties or discrimination against any person undermines that society.

"It therefore resolves:

"11. To work for and support measures which will in a spirit of reconciliation, provide amnesty for all who have been put in legal jeopardy by their resistance to the war in Indochina."

The National Council of Jewish Women is aware of the concerns raised by thoughtful people sensitive to the deep emotional impact of the Vietnam war and wish to recognize their legitimate reservations; however, we feel that a spirit of reconciliation will do much to bind up the wounds caused by the years of this war. In that vein we wish to quote from a petition submitted in 1971 to the President of the United States and the Congress by a group of college professors and others who work closely with young people.

"These men are still young, many of them still in their teens; most have probably never voted in a federal election. Their lives have been deeply affected by a war which was not of their making. One which—we feel sure—the overwhelming majority of this nation wish we had never begun and pray may quickly end. So deeply felt is the revulsion against this war, that the air is full of charges and countercharges as to who was to blame for it . . . But let there be no legal recriminations among ourselves for the fighting or the refusing to fight this war. The healing and reconciliation of the nation, its re-direction toward peace with itself, will be difficult enough. It will be folly to make it even hearder by exacting heavy legal penalties from these young men."

It is now a year since the official close of the Vietnam War. It is termed by some as one of the most divisive wars in the history of this nation and one which created wounds that must be healed because it affects large numbers of people in our population. It has been variously estimated that tens of thousands or even several hundreds of thousands of young men will benefit from this amnesty. This does not include members of their families, who are suffering separation and grief because of the plight of their sons.

We agree with former Secretary of the Army, the Honorable Robert E. Froehlke, who was convinced amnesty was needed to "begin mending in every possible way the heartbreak and wounds left" by the war in Vietnam. He further elaborated "I am not prepared to say Vietnam was right or wrong, Vietnam deeply hurt America."

Since ancient times amnesty has been granted to heal wounds created by military conflicts. History records that Julius Ceasar again and again granted amnesty to his political and military foes. European countries have a record of grainting amnesty, and United States Presidents, beginning with George Washington, have granted some form of amnesty, after every military conflict.

Amnesty is necessary to heal the wounds and divisions of the Vietnam war and to restore to useful citizenship those who are now barred by legal restrictions.

History indicates that Congress has exercised the authority to "amnesty" war resisters, as was demonstrated in 1898 when Congress authorized universal amnesty following the Spanish American War. We, therefore, urge that Congress enact without much delay a broadly framed amnesty bill.

LIBERTY LOBBY STATEMENT ON AMNESTY SUBMITTED TO HOUSE JUDICIARY COMMITTEE

Mr. Chairman and Members of the Committee, Liberty Lobby appreciates this opportunity to present the views of its 20,000-member Board of Policy, and also the approximately quarter million readers of its monthly legislation report, Liberty Letter.

Liberty Lobby is an institution of American citizens, often called the people's lobby, who have joined together to promote their patriotic and constitutionalist

convictions for good government. Liberty Lobby's position is different from those of special interest pressure groups, and approaches these issues solely for the best interests of all the people in our country.

In addition to our publications, a million and a half listeners hear our daily radio program, "This Is Liberty Lobby," on 125 stations from coast to coast.

As a result of this wide, representative contact with citizens across the country, Liberty Lobby is in a position to transmit the feelings of a large cross section of the American public which has no vested interests other than the welfare of the people as a whole.

As indicated in the enclosed Liberty Lowdown 102, "Liberty Lobby and War," which we ask be included in the record as part of this statement, Liberty Lobby has from the very beginning opposed the Vietnam war "from a profound adherence to nationalism and hostility to internationalism." We consider that the U.S. should never have become involved militarily on the mainland of Asia, 9,000 miles from our shores, just as Gen. Douglas MacArthur said. However, once we had, through incredible ineptitude, become so involved, then the only course for the U.S. was to win and get out, as we consistently advocated over the years.

Liberty Lobby opposes blanket amnesty to those who in our time of need dodged the draft or deserted the armed forces in recent years. Whether they were motivated by cowardice or desire to protest the war has no bearing on the granting of amnesty.

There should be no question about prosecuting those who deserted the armed forces. These people committed illegal acts and should be prosecuted because they were well aware at the time they were committing illegal acts.

Another group requests amnesty. They are the ones who fled this country to avoid presecution and took up residence in a foreign land. They did so under their freedom to choose. They were free to return to the U.S. and accept the draft call, or refuse the draft and pledge their allegiance to some other country. They have placed their judgment above loyalty to America, and we see no reason for this group even to request consideration of anmesty.

A third group refused the draft to make a personal protest against the war and carried their case against the war by following the true course of civil disobedience and standing trial for their act. This group has no need to request amnesty because they have followed to the end their objections to the draft.

Some 3 million men served honorably in the armed forces in Vietnam. About 9,000–10,000 draft dodgers and deserters are under indictment or have been charged in criminal complaints, according to the Department of Justice. The great bulk of deserters and draft dodgers, 30,000, are fugitives who can turn themselves in and follow the procedure used by many others. Why change the law now to satisfy other fugitives from justice?

Many men would have preferred not to serve in the armed forces when called to duty under the draft, but they recognized their moral duty and did serve their country. They further knew that if they refused to accept the draft or fled to a foreign hideaway, they were violating the law and would be subject to punishment as prescribed by law. Liberty Lobby feels that those who violated the law should be tried—each case individually. Perhaps the jury of peers should include returning POW's and wounded servicemen.

Another group deserves mention: the more than 50,000 Americans who died in uniform to protect those 40,000 deserters now sulking in bitterness and frustration. They would love to be able to return to this country.

As a final point, if President Nixon is found guilty of treason or any other crime, would this body consider granting him amnesty? We certainly believe this should not take place.

Thank you for this opportunity to submit our statement for the record.

[From Liberty Lowdown, No. 102, August 1971]

Liberty Lobby and War

Liberty Lobby's consistent opposition to the commitment of American ground troops to the mainland of Asia, and hence the institution's opposition to the Vietnam war since the beginning, has arisen from a profound adherence to nationalism and hostility to inter-nationalism.

Contrary to the politicians and the liberals, the position of Liberty Lobby has not been based on political considerations which vaporize anew with the advent of every dawn. On the contrary, history now vindicates Liberty Lobby, because

its position has been rooted in the deepest wellsprings of the American experience, as well as a general political philosophy which is absolutely stable and valid for all time.

Merely pointing out that the U.S. should never have gotten intertwined in the insoluble problems of Indochina is not enough. There is a lesson to be learned that is permanently valid. If the death of 54,998 Americans in Vietnam has taught their countrymen the lesson that departing from nationalism and venturing into the quicksands of international meddling is disastrous, then their death has not been in vain. If America learns to mind its own business, and recognizes that the solution of misunderstood problems within America is infinitely more important to Americans than knowledge of the incomprehensible problems of aliens, then that simple lesson in sanity may put into motion a process that will in the end save America.

Liberty Lowdown expressed this pholosophy in its very first issue. (Feb., 1963). Speaking of DeGaulle's unexpected rejection of Britain as a Common Market partner, Liberty Lowdown observed:

"Let us get our bearings and understand a central fact. From the point of view of an alert patriot, America has no real friends overseas, only interests. A nature view of foreign affairs demands a completely objective view of overseas personalities. America for too long has been victimized by the venal propagandists who demand that every foreigner be made into either a devil or a saint by the press. Sane foreign policy categorically demands that the value for Americans at all times is American national interest, not the welfare of a supposed "friend," or revenge upon a supposed enemy.

Out of the hypocrisy, greed, stupidity, and political chicanery that combine to form an internationalist foreign policy has come total ruin—ruin in the political, economic, and cultural spheres. As is pointed out in Liberty Lobby's new booklet, *America First*, this Nation's foreign adventuring was the diseased child of criminal parents, not the noble crusade for perpetual peace and brotherhood it was touted to be. Exploiting the natural gullibility of an unsophisticated American public unfamiliar with the complexities of the internatuional jungle, the backroom conspirators and international war criminals have aggresively raped and plundered the world, using the wealth and manpower of America to do it, and masking their criminality and their guilt with a tinsel facade of altruism created by mendacious newspapers, corrupt preachers, bloated, tax-free foundations, and—yes, most certainly yes—hired politicians.

THE FRAUD OF THE PRESENT

Today, liberal media make much of the Pentagon Papers, and work overtime to exploit these revelations to escalate the activities of those who aim to tear down the whole American society. These documents show that America was shanghaied into Vietnam by professional political tricksters. They throw a great suspicion on the credibility of the "Gulf of Tonkin Incident." They show that the brutal murder of Ngo Dinh Diem and his brother by Kennedy's CIA (which these same liberals praised at the time) was the fatal blow to national Vietnam, and was the very event which "de-Vietnamized" the war.

These revelations are new only to the gullible victims who have any faith in the so-called "free press" of America. Any reader of Liberty Letter and Liberty Lowdown should be prepared for them, because since 1963 LIBERTY LOBBY has—again and again—exposed the treasonous fraud of internationalism, and specifically our misbegotten Vietnam adventure.

TONKIN GULF

In Sept., 1964, Liberty Lowdown No. 19 said:

"To the casual observer the incident in the Gulf of Tonkin was merely a case of Uncle Sam finally getting 'fed up' and putting the Reds in their place. A more mature observer would note that this came at a very useful hour for President Johnson * * *."

NGO DINH DIEM

Liberty Letter No. 54 (June, 1965):

"WHY CHOOSE BETWEEN EVILS?

"The recent dispatch of Marines to the Dominican Republic is but another proof of the incompetence of our policy-makers.

"It is not that we are opposed to the action—under the circumstances, we support it—but more than one authority has stated that the assassination of anti-Communist pro-American General Trujillo, which is the cause of all of the unrest there, was carried out by the State Department and the CIA, and we see no reason to doubt it.

"Likewise, the military action in Vietnam is the direct result of the assassination of the heroic Ngo Dinh Diem and his brother. Suzanne Labin and other experts claim that this assassination too, was carried out by the paid agents of the last Administration. We remember well, and with a sick feeling, how the liberals chortled with ill-concealed, sadistic glee at the grief of Madame Nhu at the time—and if you doubt it, go back and read the papers of the day.

"The truth is, the Left has gotten us into the mess we are in overseas, as well as at home. *Every* foreign problem we have, without exception, is because of the policies of disaster followed by the Roosevelt, Truman, Eisenhower or Kennedy administrations, and we aren't kidding ourselves to imagine that there will be any difference under the new 'anti-communist' pose of Lyndon Johnson. In fact, there won't be any difference until the voters clean house in Washington. We fail to see how fighting Communism in Vietnam can be as effective as fighting it in Cuba, or in Washington, D.C., or Selma, Ala. We can't start in Vietnam."

DEFEAT WAS THE AIM FROM THE START

It takes real will power for the observer to conclude anything else but that American defeat was the aim of our intervention in Vietnam right from the start. Added to the record of pure treason of the State Department for the past 38 years since the recognition of the U.S.S.R., any other conclusion is a mark of mental incompetence. But those who guide our destiny are not mental incompetents; on the contrary. With billions of dollars to spend on expert advice, intelligence and "think factories," why is it that they always do the wrong thing? This question is even more intriguing when it is recognized that Liberty Lobby, operating on a budget of pennies as compared with the U.S. government, and without the huge international network of spies, agents, and experts purchased by the tax dollars of the suckers who pay for this treason, has been right and the government has been wrong all along. Here are some more quotes from previous issues of Liberty Lowdown:

"[Liberty Lowdown, No. 30 (Aug., 1965)]

"The American people are in a mess in Vietnam, and their President is getting them in deeper every day. * * * *Not once* has President Johnson stated that the American policy in Vietnam is to defeat communism. *Not once* has President Johnson stated or outlined a strategy for victory. And while escalating the war—he repeatedly assures our enemies that we will negotiate "with any country—at any time."

"It is time for the American people to demand answers to questions, not tamely submit to an irresponsible policy which can lead only to disaster. The people have allowed the State Department to give away Eastern Europe to the Reds. They have sat back and believed State Department apologists when they gave China to the Reds. They have wondered about the State Department's partnership with the communist assassin, Castro. They have puzzled over the State Department's hostility to anticommunist coups in Latin America. They have even accepted the murder of Trujillo and Ngo Dinh Diem because the State Department assured them it was 'best' for the people of the Dominican Republic and Vietnam. After such a record it seems foolish to believe the promises and the statements of this same State Department. . . .

"The strategy of the Johnson Administration in Vietnam is to fight a land war. The French tried this same tactic and brought in 400,000 men. They left Vietnam after suffering casualties of nearly 200,000. General MacArthur and other military experts have highly criticized the strategy of fighting such a war in Asia. . . .

"U.S. leadership will not listen to the men who know how to win—the military experts. They persist in neo-Korean policies that will not allow military actions necessary for victory. They will not allow weapons to be employed that could insure victory with negligible manpower loss. They will, however, sacrifice thousands of American fighting men as cannon fodder in their escalating 'fight for peace.' While our sons die in battle, the Johnson Administration allows our 'friends and allies' to feed and supply the enemy. Rep. H. R. Gross (R-Iowa) says, 'It is not widely known, but in 1964 more than 400 "free world" ships landed supplies at the port of Haiphong in North Vietnam, and it is predicted that the figure for 1965 will be even higher * * *.'"

[Liberty Lowdown No. 40 (June, 1966)]

"A war, as Chesly Manly suggests, brings on a process of social disintegration and cultural crisis and tends to break up existing political balances and create an entirely new status quo. This has the effect of stabilizing the existing regime and strengthening its totalitarian tendencies. In other words, during a war, including a fake one, fought for no valid reason (such as World Wars I and II) the voters will tend to accept the permanent militarizing of society, even demand it; freedom and individual rights vanish to a dim memory and the power of the central government grows. War is the biggest single cause of socialism. In the present case, a growing war will totally eradicate the presently-hopeful prospects for a resurgent American conservatism and make any thought of saving America hopeless. Finally, a war serves to add incident to the constant warnings we have heard from our propaganda ministers about the 'need' for world government lest we are all blown to atomic dust.

"Besides the Democrats, the Kremlin also gains by America's involvement in Vietnam. The central fact of world history since Roosevelt's election in 1932 is that the 'American' government will, at all times and at all costs, support the foreign policy of the Soviet Union. The war in Vietnam is part of that pattern * * *."

There is something radically wrong with a system which can spawn and feed and tolerate an engine of treason and national dissolution within itself. How much longer America can exist even as a nominal nation under these circumstances is a dismal but necessary question.

LAWYERS COMMITTEE ON AMERICAN POLICY TOWARD VIETNAM—THE CASE FOR AMNESTY

It is not surprising that the Vietnam War, one of the most divisive in American history, has an aftermath of continuing divisive controversy. Among these controversies is the issue of amnesty for those young men who unlawfully evaded or deserted military service.

The issue is raised by amnesty bills in Congress which have been the subject of heated debate. The fact that the presidential candidates were forced to address themselves to the issue early in 1972 indicates the extent of public interest. The public interest must necessarily have arisen from the existence of a large body of public opinion favoring amnesty. Thus, a Gallup Poll in June 1972 showed 36% of the persons surveyed favoring amnesty for those who left the country to avoid the draft, and 60% opposing it. Among those in the same age group as the draft evaders, the opinion was evenly divided. On February 29, 1972 Senator Edward Kennedy, whose Senate sub-committee was holding amnesty hearings, said, "On every college campus, the question of amnesty is one of the first a political leader must answer."

But the wisdom of amnesty cannot be determined by a Gallup Poll. The strength of democracy lies in its ability to protect the rights of minorities and to tolerate dissent. Unfortunately, much that we hear from the administration in opposition to amnesty is based on emotion rather than reason or fact. War resisters, draft dodgers and deserters who are lumped together and classified as criminals, can more convincingly be ridiculed for their "higher morality" if they are presented as a tiny group of cowardly traitors as President Nixon did when he referred to them as "those few hundreds" who fled the country. The problem could not be dismissed so cavalierly if the public were told that the actual number is more nearly 100,000 than a few hundred and that many millions of Americans sympathize with them in their opposition to the war.

Charles W. Colson, a former Presidential Counsel and spokesman for the Nixon administration on amnesty said:

"While the deserters cite conscience as their motive, a closer analysis would reveal that they were simply lazy, or resentful of their country as dictated by the trendy opinionmakers, or that they were cowards or that they were simply incapable of maintaining the grade-point averages sufficient to qualify them for draft deferment. * * *

"To grant amnesty to these people would be to vindicate the moral position they pretend to. * * * We shall never vindicate those who deserted their country, for to do so would be to dishonor the two-and-a-half millions who served their country with honor" (The Boston Globe, February 19, 1973, p. 13).

A more rational solution to the problem would result if it were approached with the widom expressed by Professor Henry Steele Commager in his statement before a Senate Subcommittee hearing on amnesty on March 1, 1972. He said:

"A nation does not adopt important policies—policies affecting the lives of hundreds of thousands of its young people—and affecting the whole fabrics of the social and moral order—out of petulance or vindictiveness. It bases its judgment rather on the interests of the commonwealth. * * * We should make our decisions on the questions—complex enough to be sure—of what appears to be the long-range interests of the nation."

In our search for a rational approach to the problem we shall look, first, at the extent of the problem, then at the nature of amnesty, the precedents for amnesty, and the reasons for granting or denying amnesty after the Vietnam War.

THE EXTENT OF THE AMNESTY PROBLEM

It is difficult to obtain reliably accurate figures on the number of draft evaders or deserters to whom an amnesty would apply, but all of the estimates are high. The Department of Defense figures indicate that the desertion rate in Vietnam may have been higher than in any other war in our history. Between July 1966 and July 1971, 354,427 servicemen were administratively classified as deserters. In 1970 the Army had 65,643 deserters, with a rate of 52.3 soldiers per thousand, which was more than twice the rate for the Korean War. For the year ended June 30, 1971 the rate was 73.5 per thousand, the highest desertion rate of the deserters were still at large as of September 1971.

Statistics on draft violators are less reliable and there are no official estimates. There are two general categories: (a) those who failed to register and (b) those who were called but failed to report for induction. Since the administration of the draft was in the hands of local draft boards, there was a lack of uniformity of procedures. Only after the state authorities failed to solve a case was it turned over to federal authorities for investigation or possible prosecution. Justice Department statistics indicate that as of January 1972 a total of 6,091 persons had been indicted for Selective Service violations and another 12,333 cases of possible violators had been reported to United States attorneys. Of these, 4,201 were fugitives. The total number of fugitives whether within or outside the country is, no doubt, much larger.

There are varying estimates of the number of American youth who have fled the country because of the war. The Canadian government is reported to have estimated that from 70,000 to 100,000 Americans went to Canada because of the war. A much smaller number went to Sweden and other countries. The National Interreligions Service Board for Conscientious Objectors has published the following estimates:

Exiled draft resisters and military deserters	60, 000–100, 000
Resisters and deserters in military or civil prisons, on probation or facing court action	10, 000
Resisters and deserters underground in the United States	80, 000
Vietnam veterans with less than hornorable discharges who suffer handicaps in seeking employment	300, 000
Civilians charged with anti-war acts	[1]

[1] Unknown number.

* * * * * * *

to desert from the armed forces, (3) the provisions of the U.S. Code prohibiting the use of contemptuous words against the President and other government officials, and (4) the provisions of the U.S. Code prohibiting insubordination, disloyalty, mutiny, etc. by any member of the military forces. The amnesty provided includes the restoration of citizenship and property rights, the immunization from criminal prosecution, the expunging of records of violations and the granting of an honorable discharge to anyone who received a less than horonable discharge from the Armed Forces because of a violation of one of the laws for which amnesty is granted. In addition to the automatic amnesty, an amnesty commission is to be established with power to grant general amnesty to any individual who, during the same period, violated any other Federal, State or local law, if the commission finds that the violation was motivated by opposition to or protest against the involvement of the United States in Indochania and the individual was not responsible for any significant property damage or personal injury to others.

The Koch bill would grant conditional amnesty. The condition would be two years of civilian service—service comparable to that required of men classified as conscientious objectors. Those in prison would receive up to one year's credit for the time of their incarceration.

Amnesty is typically granted as an act of sovereignty, for the benefit of the state and society, and is not regarded as a surrender to lawlessness. Thus the Abzug bill contains a declaration that amnesty is a necessary measure for reconciliation after the cessation of military operations in Indochina. Just as criminal penalties are one method of dealing with violations of law, amnesty is a legal instrument for use in circumstances where "magnanimity will serve the society's interests better than punishment." (J. Richard Newhaus, The Good Sense of Amnesty. Nation, February 9, 1970). In some cases amnesty has been offered to deserters to induce them to return to the army. In others it results from a recognition of the fact that sometimes it is healthier for society to forgive or forget offenses than to risk a continuance of resentment and hatred from within. "* * * from the standpoint of the group in power, amnesties are politically expedient only when the regime is safe from further violence and when clemency may not be mistaken for weakness." (Encyclopaedia of the Social Sciences, op. cit., p. 38)

Conceivably a state, that is secure in itself, could decide on amnesty out of a recognition of its own past error just as a pardon is granted to a convicted criminal when subsequent evidence indicates that the conviction was in error. Magnanimity and the admission of error are signs of strength and security in a nation as well as an individual. In recent history Charles DeGaulle was capable of reversing a policy he deemed erroneous and after he resolved the Algerian conflict he granted general amnesty to most of those who had illegally resisted the French government's policies. None could interpret it as a sign of weakness.

AMNESTY PRECEDENTS

The earliest recorded case of amnesty is that granted to all citizens, by Thrasybulus, the Athenian general in 404 B.C. after expulsion of the Thirty Tyrants (who were excluded from the amnesty), in an effort to "erase civil strife from memory by the imposition of legal oblivion." (Encyclopaedia of the Social Sciences, op. cit., p. 37). That amnesty is typical of many others throughout subsequent history.

Among the amnesties in French history are the "lettres d'abolition" accompanying a truce between the Armagnacs and the Burgundians in 1413, the Edict of Nantes issued by Henry IV in 1598 ending persecution of the French Huguenots, Napoleon(s imperial decrees of 1802 and March 13, 1815, and the amnesties following the civil disturbances of 1871 and the Paris Commune in 1881, the amnesty of wartime deserters and military service evaders in 1919, the amnesties of insurrectionists and communist agitators 1920–40 and those after World War II and the Algerian War. (Harrop Freeman, One Nation Indivisible, the Legal and Historical case for Amnesty, Arizona State University Law and Social Order Journal, Fall 1971)

In England amnesty was granted in 1651 after the civil war and again in 1660 after the restoration of Charles II. Again in 1747 an act of amnesty was passed to pardon those who had taken part in the second Jacobite rebellion. After World War II France, Norway, Germany, Belgium, Japan and the Netherlands granted amnesties to some who had been engaged in compromising activities. (Encyclopaedia Britannica 1964 V. 1, p. 808)

There have been approximately 35 acts of amnesty in American history including those granted by the congress and the executive. While no formal amnesty for deserters was proclaimed after the American Revolution, no effort was made to punish them though the desertion rate was extremely high in Washington's army. As President, Washington provided the first precedent for amnesty when he pardoned the participants in the Whisky Rebellion of 1794. He said, in an explanation to Congress:

"Though I shall always think it is a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet my personal feeling is to mingle in the operations of the government every degree of moderation and tenderness which justice, dignity and safety may permit" (Eichardson, Messages and Papers of the Presidents, V. 1, p. 276).

In October 1807 President Jefferson granted a full pardon to all deserters from the Army who would surrender themselves within a period of four months. Similar pardons were granted by President Madison during the War of 1812.

The Civil War period was one in which the divisions in the nation, the rate of desertion and the incidence of draft evasion all resemble the current period. Indeed desertion from both the Union and Confederate armies was as high as

10%. The period was characterized by a series of amnesties by President Lincoln, President Johnson and Congress, directed toward deserters, political prisoners and to persons who participated in the rebellion. Lincoln stood firm for magnanimity against those who would be vindictive as did President Johnson after him. No leader of the defeated rebels was executed or brought to trial for treason. The Fourteenth Amendment diaqualified those who had taken part in the rebellion from holding Federal office but authorized Congress to remove the disability. After many special or private acts of amnesty under this authority Congress enacted a general amnesty law of 1872 that removed the disability for many thousands of persons, and in 1898 a universal amnesty act removed all disabilities from all former rebels.

On July 4, 1902 President Theodore Roosevelt proclaimed amnesty for those who had participated in the Philippine Insurrection. There was no general amnesty during or following the World War I period though there were particular proclamations of amnesty affecting a small number of deserters and draft and espionage law violators. However, in 1933 President Roosevelt granted amnesty and restored citizenship rights to some 1,500 persons who had served sentences for draft and espionage law violations.

The desertion rate and draft evasion rate in World War II was very low but after the war President Truman appointed an amnesty commission which considered individual cases and granted amnesty to some 1,500 violators. In December 1952 President Truman issued proclamations granting amnesty to all who had deserted the armed forces since World War II and had been court-martialed or dishonorably discharged and to all ex-convicts who had served in the armed forces during the Korean War. There was no amnesty for deserters or draft evaders in the Korean War.

Thus, the civilized world has ample precedent for a policy of reconciliation, and in America, amnesty has an honored tradion. Is there any evidence in our history indicating that a broad general amnesty now would make it more difficult for the United States to raise an army for another war? Professor Commager, an outstanding historian, said in his testimony before the Senate Subcommittee:

"Such speculations are what Lincoln called 'pernicious abstractions'; certainly Lincoln's use of amnesty did not appear to have any effect whatever in later wars."

ARGUMENTS AGAINST AMNESTY

1. *Those who violate the law must pay the penalty.* President Nixon said, in his press conference on the subject on February 4, 1973: "Amnesty means forgiveness. We cannot provide forgiveness for them." He went on to say that the deserters and draft dodgers must pay a price and that the price is a criminal penalty, not "a junket in the peace corps."

Such a statement might be motivated by: (a) a belief that strict discipline is necessary for military morale, for the success of future conscription or the preservation of the state; or (b) an attitude of vindictiveness; or (c) a shrewd assessment of the political benefits to be derived from a hard line position. The hard line position he took then and in the latter part of the 1972 campaign is different from his statements a year earlier when he said that he could be very liberal with amnesty once troops and POW's were safely out of Southeast Asia. (Conversation with the President by Dan Rather, CBS Television and Radio, January 2, 1972). To a person with a vindictive nature, the very thought of anyone violating the law and not being punished is repugnant and in many cases there is more popular appeal to a vindictive or "knee-jerk" reaction than to a more rational and objective approach to the problem. Charles Colson, for example, said:

"But is mercy warranted? This war was fought in the main by the poor, the minorities, the disenfranchised and those young working men and women who had yet to attain the upper-middle-class sophistication that sneers at love of country and takes all the nation has to offer while giving little in return" (The Boston Globe, February 19, 1973, p. 13).

As for the practical reasons, there is no doubt justification for refusing amnesty during the war while men are being drafted, unless it is conditioned on volunteering for military duty. But after the war is over and the draft law has expired, there is no historical evidence to indicate that society would be harmed by a general amnesty.

2. *Amnesty would be an offense to those who served in Vietnam, especially to those who were killed, wounded or taken prisoner.* This is a psychological reason that is

appealing to the average person who is sensitive to the injustice of allowing one person to escape penalty while others suffer from their obedience to the law. Mr. Colson puts it this way: "For each who went to Sweden, another went to Vietnam. And more than 46,000 lost their lives."

However a more rational approach is that of James Reston, Jr., a Vietnam veteran himself, who describes this as pitting victims against victims. "It is the Vietnam policy that has made casualties and mercenaries and POW's and jailbirds and legal evaders and exiles of an entire generation of Americans. They are all casualties. But now, one victim, the Vietnam dead or the Vietnam returnee, is used against another, the refugee." (Universal Amnesty, The New Republic, February 7, 1972, p. 15.) Many other veterans including some of the former POW's and also families of men killed in the war have expressed similar views, though it is not claimed that magnanimity is universal among them.

3. *Amnesty would contribute to disrespect for the law and the breakdown of law and order.* Law and order has been such an emotional issue in recent years that every politician is fearful of appearing to be "soft" on violators of the law. But the concern about law and order has to do chiefly with violent crimes against person or property. Desertion and draft evasion because of opposition to the Vietnam war policy or opposition to all war are political crimes and are non-violent. Persons committing such offenses would, if their civil rights were restored, tend to be a civic influence in our society against violence.

Also, that approach fails to take into account the fact that many of those who deserted or evaded the draft did so because they did not want to take part in what they regarded as violations of higher, international law or moral law. They did not take their action out of disrespect for law.

4. *To grant amnesty would constitute an approval, by the government, of the violations committed and the motives of the violators.* While a nation could have a change of heart and approve acts which when committed, were violations of law, an act of amnesty does not necessarily signify approval any more than a pardon signifies approval of the crime. It signifies "forgetfulness." The violation stands but the penalty is waived by the state. It would be a recognition that under some circumstances reconciliation serves society's interests better than a strict enforcement of the law.

REASONS FOR GRANTING AMNESTY

Any decision affecting such a large segment of society as the amnesty issue does, should be made only on the basis of the long range interests of the nation and after carefully considering the consequences. In this spirit, the following are some of the considerations that should influence the decision:

1. *Amnesty would help to heal the wounds of the war and to reestablish confidence in government.* The divisions in the nation caused by the Vietnam War have been wide and deep and are comparable only to the tremendous gulf that separated people at the time of the Civil War. Presidents Lincoln and Johnson were both wise enough to see that any attempt to punish those who rebelled against the United States though technically guilty of treason or desertion, would be futile and self-defeating. It was only through such a policy that the nation was started on the long path of healing the wounds of war.

While the number of young people directly affected by the amnesty issue may be counted in the hundreds of thousands, there are many millions more, including distinguished and respected leaders in all walks of life, who have opposed the war policies of the government and would be sympathetic with these young people. A policy of vindictiveness would only alienate further this large segment of society, which had lost faith in our government. A policy of amnesty would contribute to a restoration of that faith.

2. *The nation would benefit by bringing back into useful citizenship, youths who are in exile or underground.* Historically our nation has been the refuge of thousands of people who fled Europe to escape oppression, injustice, tyranny and military service. These people and their children have included some of our most illustrious citizens and have contributed greatly to the growth of the nation.

Now, the tables are turned and we find many of our finest youth estranged or in exile for reasons similar to those that brought an earlier generation to our shores. Representative Bella Abzug said in support of her amnesty bill:

"It is an unprecedented fact that this county has lost to self-exile, an enormous number of the finest, most conscientious, most creative young people. One of the most important purposes of any amnesty measure must be to bring these exiles home, so they can lend their energies to rebuilding the nation * * *."

If these exiles are brought back it would also end the emotional and economic suffering of the families from whom they have been separated. The nation as a whole would benefit tremendously if these thousands of young people could be reintegrated into our society.

3. *Those who refused to go to war may have obeyed a higher law or standard of morality than those who obeyed their government.* Opposition to the Vietnam war became so widespread before it ended that scarecly anyone fully supported it. Some opposed it on the basis of political policy, some on economics or military policy , some on the basis of morality and a substantial body of international law and constitutional law experts opposed it on the basis of legality.

The United States was accused of violating its commitments, in the UN Charter and other treaties, to refrain from the use of force in international relations. The manner in which the war was conducted may have violated the laws and rules of war and the various Hague and Geneva Conventions. The United States was at least partially responsible for the violation, by South Vietnam, of the Geneva Accords of 1954. There is substantial authority to the effect that the President exceeded his constitutional powers in more than one respect during the course of the war, and the means by which congress was induced to put its blessing on the war by adopting the Gulf of Tonkin Resolution has been characterized as fraudulent. The case of illegality need not be proven beyond a doubt to make the point that the legality of our government's actions was highly controversial.

Norman Cousins in an editorial entitled "Amnesty for Whom?" makes the point that the war makers need amnesty at least as much as the war resisters. He said:

"It takes an act of will rather than of logic or conscience to say that the Nuremberg precedents have no relevance to the Vietnam War. The official arguments used originally to justify our actions in Vietnam have long since been refuted—not just by the revelations of the Pentagon Papers but by the open course of events. The record as it now stands points to substantial illegality and wrongdoing" (World, April 10, 1973, p. 14).

Attempts by the government to punish deserters and draft evaders would only raise anew the legality as well as the morality of the acts of the government in this war.

Professor Commager takes a similar view from the standpoint of public opinion rather than legality, in the following statement:

"May not we say that the majority of those who have deserted or gone underground merely took 'prematurely' the position which the majority of Americans now take; more that they took prematurely the position which the Government itself now takes—that the war was and is a mistake, that we should extricate ourselves as expeditiously as possible * * * . May not the deserters and evaders claim that their error is to have been ahead of public opinion and of Government policy, and that it should be easy to forgive the error?"

5. *Attempts to punish will be futile and counterproductive.* The important lesson that the nation should learn from this war is that no war or other endeavor requiring a national commitment can be successfully prosecuted without the enthusiastic support of the citizenry. Time and again government spokesmen blamed the dissenters for the failure of the military policies. The real mistake however was in attempting to force on the public a war that did not have general popular support such as the support for World War II. To try to punish the dissenters after the war would only compound the error and would teach no one a lesson.

A subsidiary point is that the jails are not nearly big enough to hold all who might be subject to the charge of desertion or evasion and the cost of incarceration would be astronomical.

Amnesty is the only realistic answer to the question of how to treat these dissenters. The nation would do well to follow the advice of Lincoln in striving to bind up the nation's wounds, with malice toward none and with charity toward all

---

STATEMENT OF UNITED STATES NATIONAL STUDENT ASSOCIATION-NATIONAL CAMPUS ALLIANCE FOR AMNESTY

AMNESTY

The war in Indochina has left scars and open wounds still festering here in America and abroad. It has ripped the basic fiber of our country and threatens us with unending repercussions if we fail to confront the problem it has created. We must deal openly and quickly with the war and its effects to ensure a beneficial reconciliation of our nation's citizens.

Foremost among these problems is the fact that upwards of 500,000 Americans are presently liable for, or have received, some kind of criminal penalty as a result of their resistance to the war. For these individuals, as for the people of Southeast Asia, the war continues. The war resister remains in prison, living underground in the United States, exiled abroad, or permanently stigmatized by a less-than-honorable discharge.

The United States National Student Association through its project the National Campus Alliance for Amnesty, has joined with other student and amnesty organizations in working towards universal and unconditional amnesty for all war resisters. We speak as students and as young people because we strongly believe that a youth perspective should be brought to bear on any discussion of amnesty. It has long been recognized that the student is the conscience of society. We have lived with the war for almost the entirety of our lives. It was ourselves, our brothers, and our friends who fought this war and who resisted this war. We feel, therefore, that we have a different perspective on the issues than any other group involved. The majority of all Vietnam War resisters are members of our generation, and we feel it to be our responsibility to see that our brothers and sisters are treated fairly.

NSA does not pretend to represent all of America's students, nor can any one organization. We are however, the oldest and largest student association in the country, representing over seven hundred (700) colleges and universities across the country. NSA has long been in the forefront of the movement for peace and justice, organizing much of the campus peace movement. Even before the wars end we took a stand for universal and unconditional amnesty, as can be seen our testimony before the Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Hearings on Selective Service and Amnesty, held Feb. 28, 29 and March 1, 1972. At the 26th National Student Congress of the USNSA, held Aug. 19–25, 1973 in Miami Beach, Florida, the following resolution was passed, reaffirming our stand on the amnesty issue.

RESOLUTION—AMNESTY

(Submitted by Tim Higgins)

Facts

For over a decade, the United States has been engaged in an unconstitutional, immoral, and politically and humanly disastrous war in Southeast Asia. Because of the military, financial, and political support of the United States government, the war continues even now. The war produced uncounted victims in Indochina, including not only those millions killed, wounded and dislocated, but also the 200,000 political prisoners in the jails of our puppet government in South Viet Nam. Among the American victims of the war have been the GI's who fought, were taken prisoner, were wounded, and died, as well as those who refused participation in the war. Tens of thousands have been subjected to criminal or administrative punishment and have suffered prison, underground life or exile for their refusal to kill or be killed in that catastrophic and unjustifiable war.

Justice and the need for a reconciled society that can work for social justice require that the war resisters be regarded, not as the criminals of the war, but as Americans who acted in the best tradition of courageous civil disobedience and political morality. This country should declare a universal and unconditional amnesty for the half million or more men and women who have suffered or face penalties for their resistance to the war, the draft, and the military.

Declaration

USNSA will continue to support the demand for a universal and unconditional amnesty for—

All military resisters (including "deserters") and draft resisters, whether in exile or underground in the U.S.;

All persons who, because of their opposition to the war and the military, have been administratively punished, convicted by civilian or military courts, or are subject to prosecution; and

All veterans with less-than-honorable discharges and will play a major role in programs and projects to achieve that objective.

Mandate

USNSA calls for a universal and unconditional amnesty for all war resisters, including draft violators, deserters, those convicted by courts martial of purely military offenses, veterans with less-than-honorable discharges, and civilian protesters against the war.

USNSA will—

(1) Join the National Council for Universal and Unconditional Amnesty and work with other organizations to advocate such an amnesty enactment at the earliest possible time;

(2) Cooperate with and encourage student organizatlons to participate in Amnesty Week 1973 (October 14 to 22); and

(3) Call upon resource specialists and speakers to educate the American people, especially those on campuses, about the structures and institutions that created the war in Southeast Asia and to mobilize them to work for a universal and unconditional amnesty.

What we are asking is that we, as a nation, begin to recognize the legitimacy of beliefs which run counter to our government's stated policy. It is time that we recognized that the mark of a mature nation is not infallability, but the ability to recognize, take responsibility for, and correct its mistakes. We can ill-afford to waste more time arguing about the rightness or wrongness of individual responses to the war if we are to heal those wounds caused by it. Over seventy percent of the American people now believe that the war in Indochina was, from its inception, a serious and costly blunder. Why is it that we still refuse to end the war for those who led us in the struggle against it? For the American people there is nothing to be gained by maintaining or worsening the divisions caused by the war. On the contrary, we only stand to lose. It has long been understood that a nation's most vital resource is its youth. We can face no greater crisis or shortage than a lack of this irreplacable resource. By failing to heal the divisions caused by the Vietnam tragedy, we deprive ourselves of almost one million of America's most concerned and commited youth.

To grant a general amnesty, to say that those who resisted the war in Indochina acted out of conscience, is not to say that those who fought and died in Vietnam did not similarly act out of conscience. We recognize and respect the integrity of the many who chose to fight as the only justifiable course of action. But we beleve that those who chose to resist acted with equal justification.

We say that the people who resisted the war did not commit any crime. They did only what we all have been taught from childhood, that is to follow one's conscience, (even Walt Disney through his character Jiminey Cricket told us, "Let your conscience be your guide.") We do, therefore, endorse universal and unconditional amnesty for all war resisters.

STATEMENT OF GLENN R. SIEGAL, REPRESENTING VIETNAM VETERANS FOR A JUST PEACE

Amnesty for those who evaded the draft or deserted the military is a subject which has been debated for years, as American involvement in the Vietnam war gradually expanded and then drew to a close. Rather than being a simple issue, amnesty, especially for those of us who served in Vietnam is a very complex issue and requires a good deal of thought before a decision can be reached.

When VVJP testified before Senator Kennedy's subcommittee in 1972, we stated our belief that America is a compassionate nation. We stated that after the last American combat soldier had returned; when all of our POW's and MIA's were returned alive or fully accounted for; when the problems of the returning veterans who had served honorably were faced up to and solved; then there would be ample time to consider the inconvenience to those who chose self-exile rather than service. At a time when some 1400 Americans are still listed as missing in action, and in spite of the Paris agreements, the communists refuse to cooperate in investigating the status of these men, we would prefer to delay any discussion of specific solutions to the issue of amnesty. However, since the issue has been brought before this committee, we will comment on the various aspects of amnesty.

There are two words which inevitably come up in any discussion of amnesty—guilt and morality. The argument used by the exiles and their allies in the media is that America is guilty of conducting an illegal, immoral war and therefore the evaders broke no real laws by refusing to serve in it. VVJP rejects this attempt to transfer the guilt from those who violated the law to the nation as a whole. When a law is on the bocks it remains in force until it is removed. In a democratic society one is free to break any law he wishes, but he must be prepared to answer for his actions. Throughout all the years of the war, the selective service laws were not struck down by the courts, nor was the war ever declared illegal. The Congress had numerous chances to legislate an end to our involvement in Vietnam but

never did so. Laws are not meant to be broken. They are meant to be obeyed or changed. Those who violated the laws and fled the country committed illegal acts. If they wish to rationalize their conduct by blaming America for what they did, that is their business. But we as a nation cannot remove the guilt from their shoulders and place it on ours.

The second word is morality. Of all the statements made about our efforts in Vietnam, probably the most commonly uttered was that our involvement was immoral. There are two points we want to cover regarding morality:

First, to listen to the exiles tell it, they were all followers of a "higher morality" than the rest of us. They claim to be disciples of Ghandi or King. These gentlemen taught that man has an obligation to not obey an unjust law; that the individual must decide which laws his conscience would allow him to obey. Of course, when Dr. King chose to break the law he made a point of paying the penalty. The difference between the "teachers" and the self-proclaimed disciples is that the latter were unwilling to pay the price of their actions. Compare the draft evaders with the true conscientious objectors who took their stand and then either went to jail or performed noncombat tasks in the military. Certainly the CO's showed the sincerity of their morality, whereas the draft evaders allegiance to the "higher morality" seems rather shallow.

Second, what standards are used to determine the morality of Vietnam? If you criticize one side as immoral, then you are, by inference, condoning the other side as moral. Throughout the war the United States and our allies have been attacked for immoral/inhuman conduct. The anti-war groups talk of saturation bombing and cite My Lai as proof of their contentions. We must point out that no army in the history of mankind ever fought a war with so many restrictions on who it could or could not shoot at.

When I was at Thien Giao hamlet we came under a mortar attack. From an observation tower we could see the mortars had been placed in the marketplace of a neighboring hamlet. Instead of calling artillery or air strike on the enemy positions, we had to wait until daylight and then move troops into the hamlet. The enemy, by this time, had already moved on. Our delayed response was done to avoid any chance of hitting civilians. This was typical of the policy set down by the US Command in Vietnam. Even during the so-called carpet bombing of Hanoi, our planes had to make their attack runs from a certain direction all the time to minimize the possibility of hitting civilian targets. The North Vietnamese knew this and lined the approach corridors with anti-aircraft weapons, resulting in a high number of US casualties and POW's. The point is that we bent over backwards to avoid inflicting civilian casualties, even to the extent of taking unnecessary friendly casualties.

Contrast this supposedly immoral and inhuman attitude with the deliberate terror tactics of the enemy. The murder of over 5,000 in Hue was an example of Hanoi's "peoples justice". At Dak Son, the North Vietnamese used flamethrowers at point blank range to kill 250 Montagnard tribesmen—none of whom was armed: At Phu Tanh, the communists murdered over 100 civilians. At Duc Duc, the North Vietnamese threw hand grenades into the Buddhist temple and orphanage, killing 15 children. At Tam Hung the North Vietnamese set fire to the hamlet aid station and then shot down the 2 nurses and twelve children inside as they tried to escape. Just this past week 32 children were killed when the North Vietnamese mortared their school in My Tho. There are few families in South Vietnam which have not had a relative kidnapped or murdered by the communists.

For us, My Lai was an isolated instance in direct violation of our stated policy. For the enemy, murder and terrorism are everyday occurences—part of their widely stated tactics. Instead of being court-martialed for murder, the North Vietnamese Lt. Calleys are rewarded for their heroism and called heroes of the revolution.

Those who cried "American immorality" and fled rather than serve have, directly or indirectly condoned the tactics, methods, and goals of the communists. Their actions would be similar to refusing to fight the Nazis because of the "immoral" conduct of the Jews of the Warsaw Ghetto during their uprising. We believe that those who have, by one means or another, condoned the actions of the enemy in Vietnam, have forfeited any claim to morality as a lever to gain amnesty.

What motivated these men to flee their country? To a man, they all claim they were motivated by sincere and long held principles of religion and/or pacifism. This is simply not true. Those with sincere beliefs applied for CO status. I served with two of these men in Vietnam (both were medics) and I have a great deal of respect for their convictions and their courage. As for the contention that only

the rich or well educated could win CO status, one of those two men dropped out of high school and was by no means an intellectual. However, his objections to war—all war—were formed many years ago, not at the moment he received his draft notice. By their own admissions, most of the draft evaders made no attempt to gain CO status. Those who made no attempt to work within the system have no right to criticize it. The fact is that most of these men ran for reasons of convenience rather than conviction. Now that the war is over, they want to return as if nothing had happened. To let them back, on their terms, would not only be a mockery of the two and a half million who served in Vietnam, but also of those who had the courage to stay within the system and honor their beliefs.

Thus far we have not mentioned deserters. VVJP is totally opposed to any form of amnesty for deserters. They are part of the military and must be handled by the military. We believe that desertion is a serious crime. Historically, deserters have ranked below only murderers and child molesters as undesirables. The deserter took an oath, then violated that oath and turned his back on his comrades. It is argued that deserters were from the "lower" classes—poor, minority, etc. Unfortunately, there has been no proof to back up this claim, only empty rhetoric. It is argued that, being lower class individuals, the deserters were not able to formulate their anti-war views until after they were inducted. We find it almost inconceivable that in view of the saturation coverage of the war by all segments of the media, that there could be people who had not formed some kind of opinion by the time they reached 17 or 18. One would have to be an illiterate hermit not to have been exposed to the war and all its supposed horrors. Even those of us who are opposed to amnesty for deserters give them credit for at least a minimum of intelligence.

As with draft evaders, it is claimed that the only reason the deserters ran away is for that of sincere objection to the war. This is the least acceptable argument of all. The Defense Department has issued figures showing only a small percentage of deserters were motivated by opposition to the war. Proponents of amnesty make a lot of noise saying these figures are incorrect, but here again they fail to produce any evidence to back up their claim. After I returned from Vietnam, I served for 16 months as a Basic Training Company Commander. Every eight weeks we received 200–250 trainees for their initial military training. Each cycle there would be a handful (1–5) who went AWOL and remained absent for 30 days, thereby becoming deserters. Not a single one deserted for any anti-war reason at all. They left because their girl friends were pregnant, their wives were sick or running around, they were homesick, they couldn't maintain their narcotics habit, or they were in trouble with the military (assault, theft, selling narcotics, etc.). It is interesting to note that over 95% of these men who deserted were volunteers, not men who had been drafted.

An illustration of why we don't believe the sincerity of the deserters, was the Army Captain, a West Point graduate, who served 3 years in Germany but deserted to Sweden when he received orders to Vietnam. Isn't it strange how rapidly he developed "sincere objections" to this particular war? We believe this case is typical of many deserters—as long as they were relatively safe and secure they went along with the system. Only when their orders for Vietnam arrived did they suddenly become conscientious objectors. This selective objection has never been recognized by the United States and we don't believe we should start to do so now.

As we stated, America is not a nation without compassion. Some of the exiles *were* motivated by sincere and honorable reasons. For these few, Vietnam Veterans For a Just Peace supports the concept of a conditional, case-by-case amnesty. We would endorse the principles offered by Representative Robison—set up an amnesty board similar to the one set up by President Truman after World War II. It might be feasible to set up such boards in each state and have the national board act as a Court of Appeals.

We believe that the board(s) should be guided by the most recent Supreme Court decisions regarding the granting of conscientious objector status. This would insure fairness to those who might have won CO status if the more liberal Court decisions had been in effect at the time of their cases.

Those who wish to apply for amnesty and present their case (with counsel if they desire) should be allowed to re-enter the country to make their presentations without fear of apprehension. (Note: This applies only to draft evaders, not deserters.) If the board rules against them, they may either return to their place of exile or remain to face whatever legal proceedings may occur.

Recipients of amnesty must agree to and perform a specified alternative service for a designated period of time—we suggest 6 months to 2 years which would

correspond to the military terms of enlistment. Upon completion of this service, their records will be cleared and full rights of citizenship will be restored. The service must not be of a political nature—such as organizing strikes and demonstrations, but rather must be non-political and non-ideological.

For those currently serving prison sentences for violations of the draft laws or who have completed such sentences, the time already served would be credited towards the service requirement. Here again, their records will be cleared and full citizenship restored.

Lastly, we wish to comment on proposals that those who received less than honorable discharges be given a blanket amnesty—that their discharges be upgraded to honorable. We oppose this idea most strongly. Of the more than 6 million Vietnam-era veterans, more than 90% completed their military obligation in an honorable fashion. These men earned their honorable discharges and the benefits which go along with that service. Those who received less than honorable discharges were all warned from their first day in the military of the dangers of not earning an honorable discharge. Most of these men were discharged for obvious reasons—theft, AWOL, narcotics, etc. To attempt to equate their service with ours would be the ultimate insult to millions of men who served honorably and proudly. We earned our rights to VA benefits the hard way. Any kind of upgrading of these less than honorable discharges would be a disservice to all veterans—past, present and future.

In conclusion, Vietnam Veterans For a Just Peace rejects the idea of a blanket or unconditional amnesty. We do support a case-by-case review to enable those few who deserve amnesty to return home again. Our position is not one of vindictiveness towards those who fled their responsibilities. We believe that in return for the many benefits bestowed merely by the privilege of being born in this country, it is not asking too much for some form of service in return. Those who were not and are not willing to perform this obligation of citizenship can become permanent residents of some country which won't ask anything of them.

OBSERVATIONS ON THE DRAFT, THE WAR, AND THE NATION

(By Gerald Ciarpelli, Vietnam veteran)

One year after the end of hostilities between the United States and North Vietnam the question of amnesty has resurfaced, this time within the halls of Congress. It is not an issue that has lain dormant. Even during the peak years of the war the question of amnesty for those who either refused to serve or deserted became a topic that eventually would have to be settled. The decision-making process must now move forward quickly. Americans are suffering from a self-imposed exile which demands a policy decision to terminate this war related matter. Regardless of the final outcome these Americans must know what the future may hold for them within the United States.

Can the nation now demand punishment for those who refused to partiscipat in the war, when American public opinion forced an end to United States involvee ment? If government policy was in error, then we must now question who waactually guilty of violating the laws of humanity. Is it the Executive Branch, which through deceit and the falsification of documents increased troop commitments and gained Congressional approval? Are not Mssrs. McNamara, Bundy, Rusk, Laird, Richardson, Kissinger and President Nixon guilty of conspiracy, in their attempts to withhold facts and information? Was the secret bombing and invasion of Cambodia legal? These questions must be answered before determining what laws or provisions are needed to settle the amnesty issue. We cannot punish those who refused to participate in illegal activities, on the contrary, they should be awarded for their vision and moral commitment to the preservation of human life. A nation in search of a scapegoat must look inward when placing blame or fault, not outward toward those who had less to do with a misguided policy than any other group of citizens.

The executive branch must initiate a policy which will deal as fairly with evaders and deserters as it has promised to deal with Lt. Calley and in the manner it has dealt with Gen. Lavelle. The first step should be allowing those outside the country to return without the threat of imprisonment. Can a nation, where an individual who has been convicted of murdering twenty-two men, women, and children, declared to be no threat to society and ultimately released on bail, be fearful of individuals who refused to kill? While the decision to grant amnesty

is debated, should not the walls keeping these Americans out of their country be removed.

The military question of effectiveness with such individuals must be appraised in terms of combat readiness. Were the Armed Forces better off without those who would question orders and refuse to kill? Surely an effective fighting machine has neither the time nor the cadre to explain policy and its implementation. Those who deserted the Services were potential risks to a unified strength. The motivation for desertion, militarily, is of little importance; however, the consequences to the unit and the individuals opposed to the war is of utmost importance. The psychological effects of forced military participation would have reduced effectiveness and increased mental disorientation. This would have been a danger to all who served, not just the individual questioning his participation.

The agrument is often raised that to grant amnesty to those who refused to serve their country would be an insult to those who fought and died. The real insult is inflicted upon the individual who must listen to these abberations of logic. None of the men who deserted or evaded the draft were responsible for any wounds or fatal injuries received by American servicemen. The agrument could be reversed, that if more had listened to the resistors more men would be alive today. The time for brow-beating has passed. Those who fought and died did so either through convictions of righteousness, ingnorance or fear of prosecution. Can we prosecute others whose convictions led them to an opposite position? There is no judicial method, yet devised, that can compensate for lives lost via prison sentences. If evasion and desertion are punishable then so should faulty advise and policy, if the latter is legal then so should the former.

Selective Service argues that general amnesty may induce other young men in the future to evade military service, but there is no historical precedent for such an assertion. From the Revolutionary War to the Civil War amnesty had been a policy designed to reunify the tattered segments of the populace. President Jackson deviated slightly from other presidents, he wanted the assurance that evaders of military service would never serve. Twentieth century policy has consistently demanded imprisonment for deserters and draft evaders. However, the wars which the United States found itself engaged in were considerably more popular. World War II took on the dimensions of a modern Crusade, Vietnam was a crusade for all the wrong reasons. Finally, with regard to Selective Service, how easy it is for old men to decide which young men shall live and die, who shall serve and who shall receive deferments. Is not a medical deferment, created by an overdose of sugar cubes or a fingerprick of blood dropped in a urine sample, a form of draft evasion? This is the worst type of evasion because it has no moral conviction attached to it most of the time, it is simply an act of cowardice. It is these same old men who handed down educational deferments while poorer citizens who could not afford college costs or meet entrance requirements were drafted. It was these men who made boys into My Lai murderers. They changed boys, with their thoughts of life, into mechanics of death. But worst of all they stole two years of life and created veterans. Veterans who now are unemployed, hospitalized with inadequate services, or receiving benefit checks that purchase less goods and services each year. If the future is laden with draft evaders or deserters it will be due to their reviewing the status of todays veteran.

With the end of the war a period of rebuilding American society must begin. The time has come to set-aside the patriotism to replenish the wounds of the American conscience. The test of freedom is upon us. Can we graciously accept those who left the country? If the answer is no, then perhaps we have lost sight of our purpose. Freedom is accompanied by the alternatives to serve or not to serve, to say yes or no, to be free in action, which penalizes no other individual rights, with the knowledge that judicial punishment for the action shall not be forthcoming.

Consideration must also be given to the families whose sons have either evaded the draft or deserted. They are suffering a fate worse than that of convicted prisoners family. The convict can have visitors and in most instances freedom within a specified period. Those who left the country have no possibility of parole from the scrutinizing eye of the Customs Service. No agent will turn his or her head from the fugitive list regardless of the years in exile. For some it has been over eight years and still there is no hope in sight.

Rather than waste funds on prosecutions or service projects for deserters or evaders, the funds would be better spent to bolster aid to those who did serve. Blanket amnesty is necessary, for those who deserted or evaded the draft, to reunify a country ripped by war, torn by scandal, and tattered by a lack of confidence in public officials. No greater task faces the nation than the reunification of an already segmented society, let that task begin now!

A Catholic Worker on Amnesty

If we are to hope that one day we will turn from the works of war toward the works of peace, there must be an amnesty.

The Catholic Worker embraces nonviolence as a way of life. It actively opposes all war and the preparation for wars in any form. It attempts to live the Gospel message of simplicity and personal responsibility through the daily practice of the works of mercy. From this basis the Catholic Worker opposed the Vietnam was and encouraged those who refused to participate in it. Similarly, the Catholic Worker calls for amnesty as a work of mercy and a means of reconciliation. It supports universal, unconditional amnesty for those imprisoned, in exile, or in other ways suffering hardship as a result of opposition to the war in Indochina.

In a literal sense, amnesty does not mean forgiving but forgetting. Those who in conscience resisted this war do not need to be forgiven for any wrong deed. Their conduct serves as an example to the community of the primacy of conscience.

In another sense, however, mutual forgiveness is an essential element of reconciliation. At the heart of the matter, we are all responsible for this war. Besides, the enormous human suffering in Indochina, this war has produced a division in our own society unparalleled since the American Civil War. Amnesty is an indispensable step towards the healing of these wounds and the restoring of a common unity. To apportion various degrees of guilt now would violate the spirit of amnesty and only widen the divisions wrought by this war.

While we call for an unconditional amnesty (without any mandatory requirements for alternative service), we remind individuals of their responsibility to the whole community to "walk the extra mile" by performing the works of mercy as a service to this community.

Literally and historically, amnesty is an official forgetting of those legal offenses in opposition to war. In urging that these actions be intentionally overlooked, we do not intend that this war and its consequences be forgotten. While calling for an amnesty we acknowledge that there is still no peace in Indochina.

This war continues to violate a basic premise of our religious faith: that, as children of God, we are all one, our humanity is indivisible. As one person suffers, is imprisoned or exiled—we are all the less. Amnesty is a small but necessary beginning to the building of peace and a re-cognition of our oneness.

Michael De Gregory.

A Statement in Favor of Unconditional Amnesty To Be Presented Before Congressional Hearing March 7, 8, 1974

For more than twenty years, the war in Southeast Asia has divided the world and divided this country. Officially, the war has ended and yet the division within this country remains.

We made a moral judgment in that war—a judgment that all peoples should be free to determine their own destiny—and yet today—much to our shame—we punish some of our own countrymen, who, out of conscience, acted upon that basic right.

Today there are certain young men, living in exile, who some years ago, for reasons of conscience chose to resist or dissent from involvement in the Southeast Asia War. They acted with resolve and commitment—the same resolve and commitment which have so many times in the past, made this country a singular champion of human rights.

Officially, the conflict has ended in Southeast Asia. It is time for the conflict to end in this country—time for us to act as we have always acted in the past—to forget our grievances, to forget our differences, to be compassionate—truly to be a nation where all men are free and entitled to live according to their conscience, without fear of punishment or recrimination.

I call upon the Congress, as representative of the true American spirit, to proclaim unconditional amnesty to all those in foreign and domestic exile who chose, out of their conscience, to resist or dissent from involvement in the war in Southeast Asia. As a Christian citizen, I believe unconditional amnesty is a necessary and initial step toward binding up the wounds that afflict our people and county.

John M. Burgess,
Bishop of Massachusetts.

Testimony on Amnesty Submitted to the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary

(Presented by William P. Thompson, Stated Clerk, on behalf of the General Assembly of the United Presbyterian Church in the United States of America)

My name is William P. Thompson. I am a lawyer and was engaged in private practice for 20 years. In 1966, I was elected Stated Clerk, which is the permanent executive officer of the General Assembly of the United Presbyterian Church in the U.S.A. I am submitting this written testimony on behalf of the General Assembly which is the highest governing body of the denomination, a judicatory of approximately 750 commissioners, half laypersons and half clergy, elected by 162 Presbyteries in fifty states, within whose bounds are 2,916,757 members. I recognize that within the total membership of the church there are individuals holding differing and sometimes conflicting views. I do not presume therefore to speak on behalf of each and every member of the church.

My testimony is based on actions taken by several General Assemblies by substantial majorities, in a representative domocratic process. The General Assembly does function in a representative capacity. Its pronouncements on social issues, to which the church has an obligation to speak, arising out of the historic tenets of the faith, are understood to be for guidance of and not as binding upon the consciences of the constituent members who remain free to address themselves responsibly to these issues as Christians and citizens.

In the course of my testimony, I will make reference to a statement on *War, Peace and Conscience* adopted by the 181st General Assembly (1969), a statement on *The Moral Crisis of the United States in Indochina* adopted by the 183rd General Assembly (1971) and a statement on *Amnesty* adopted by the 185th General Assembly (1973). The relevant portions of these documents are attached hereto, and I request that they be incorporated as part of my testimony.

Recognizing that "God alone is Lord of the conscience," the General Assembly of the United Presbyterian Church has repeatedly urged that individuals be allowed by law to choose the right of couscientious objection to participation in war. Moreover, it has recognized the superior claims of conscience even in the absence of such legislation. In doing so, the General Assembly does not differentiate between the various motivations which lead individuals to adopt such a position, but has sought rather to preserve freedom of conscience for those whose consciences forbid them to engage in military service.

Many young men, having relied upon this official position of our Church and having further relied upon the instruction and nurture which has informed their own understanding, have conscientiously objected to participation in the war in Indochina. Such persons have chosen various courses of action, informed by their conscientious objection to the war, and as a result of such action they are now in various degrees of legal jeopardy.

The United Presbyterian Church, consistent with its former advocacy of the right of individual conscientious objection to war, has felt that it must continue its ministry to persons who have adopted such a position, particularly those who as a result discover themselves to be in violation of criminal statutes. During the Indochina conflict, the UPCUSA received an unprecedented number of requests for assistance and counseling regarding the war-peace issue. In order to meet these requests a special office, with staff, was established, known as the Emergency Ministry on Conscience and War.

In a statement related to this decision, the 181st General Assembly (1969) made a clear declaration with regard to amnesty and the war in Indochina. In the statement on "War, Peace and Conscience" the General Assembly said:

"Available evidence indicates that the present administration of the Selective Service law has led to miscarriage of justice in some individual cases; and furthermore, the law itself does not provide relief for those who are morally and conscientiously opposed to a particular war. It is imperative that steps be taken to redress whatever miscarriages of justice have occurred under these conditions as soon and as systematically as possible. Moreover, amnesty for those whose violations of law are based upon higher loyalties is a cherished possibility within the American tradition and compatible with the understanding of God as a God of mercy. Therefore, redress of grievances should include consideration of amnesty in appropriate cases" (Minutes (1969), Part I, Journal, p. 699).

In 1971 the 183rd General Assembly called upon ". . . the Congress, the President, other officials and our fellow citizens for reconsideration of the plight

of those young men who, in good and sensitive conscience, have found that they cannot participate in a particular war but have not had redress or relief under existing laws. We urge retroactive recognition of their claims and reduction of punitive sentences, together with appropriate amnesty as soon and as systematically as possible" (Minutes (1971), Part I, Journal, p. 702–3).

A statement adopted by the 185th General Assembly (1973) reaffirmed the above statements and commended the study of the amnesty issue to all United Presbyterians, specifically suggesting that the study stress "the unconditional nature of amnesty" [Minutes (1973), Part I, Journal, p. 300].

Since late last year, I have been one of a number of religious leaders who have attempted to discuss the issue of amnesty with the President. Until today, the response of the White House has been that "The President's schedule is such that a time is not foreseen when he can meet with them." In view of the President's public statements of his opposition to amnesty and his refusal to discuss the matter, I am pleased that this Subcommittee is conducting these hearings. I urge the Congress to enact appropriate legislation.

Amnesty comes from the Greek word "amnestia" meaning to remember no longer, to wipe from memory, or intentionally overlook. Funk and Wagnalls New Standard Dictionary of the English Language (Unabridged) defines amnesty as "any intentional forgetfulness or overlooking, especially of wrong-doing or the like; as peace should bring amnesty."

A statement on amnesty adopted by the Governing Board of the National Council of the Churches of Christ in the U.S.A. (December 2, 1972) states: "We view amnesty, not as a matter of forgiveness, pardon, or clemency, but as a 'blessed act of oblivion', the laws own way of undoing what the law has done." It neither implies guilt nor innocence.

Our God says to us "I am He that blots out your transgressions, and will remember your iniquities no more." God expects us in turn to exhibit something of his grace toward others through our labors and in our lives. Clemency is distinguished from amnesty in that it grants through parole or pardon reduced sentence or conditional termination of punishment for a prior conviction. Clemency reduces a punitive sentence, often conditionally, but the conviction remains on the record. Amnesty, on the other hand, simply wipes the record clean, regardless of whether conviction has or has not occurred. If there has been a conviction, amnesty expunges it from the record.

You have before you a number of bills referring to "amnesty"; however, most of them would implement what is called "conditional amnesty". One such bill is the "Earned Immunity Act of 1974," S. 2832, which is now before the Senate, introduced by Robert Taft, Jr. (R.-Ohio) and Claiborne Pell (D.-R.I.). This bill would set up a board that has the authority to grant *immunity from prosecution* to anyone who has violated the Selective Service laws provided they "earn" it by performing service to the country. Such a bill presupposes the need to earn immunity and, therefore, presumes guilt on the part of its potential beneficiaries. In addition, the alternative service requirement is seen as a "quid pro quo" and in itself punitive. I respectfully suggest that such bills are not really dealing with amnesty but with a form of clemency.

Amnesty is neither punitive, nor does it imply guilt and therefore should not be confused with earned immunity. It is qualitatively different. Most of the bills currently before you would really provide only earned immunity. It is also important to note that there is no known precedent in legal history of amnesty for earned immunity such as these bills propose.

Of those bills before the House, and the one Senate bill, which relate to the amnesty issue, only two would grant true amnesty. They are H.R. 236, the War Resisters Exoneration Act of 1973 (Abzug, D.-N.Y.) and H.R. 10980, the Amnesty Act of 1973 (McCloskey, R.-Cal.). I commend both of these bills to your serious attention. I would note, however, that these bills omit a category which is numerically the largest of those in legal jeopardy, namely veterans with less than honorable discharges. Therefore, I would recommend that either H.R. 236 or H.R. 10980, be amended to provide appropriate relief for those veterans with less than honorable discharges.

As we may all recognize, the decision to resist participation in war is a difficult one indeed, demanding a strong conviction and commitment to peace. Despite the opposition in society to this position, many of our fellow citizens viewed and indeed still view their resistance as justifiable and in no way diminishing their own patriotism.

Our troubled society needs these young men, with their insights and visions for peace and justice, and their hopes for the future. We need their commitment to action in order to implement their dreams.

The Congress now has the opportunity to alleviate their suffering and to free them for full life in our society by granting a full amnesty

STATEMENTS ABOUT AMNESTY BY THE GENERAL ASSEMBLIES OF THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A.

In a statement on "War, Peace, and Conscience" the 181st General Assembly (1969) said:

"Redress. Available evidence indicates that the present administration of the Selective Service law has led to miscarriage of justice in some individual cases; and furthermore, the law itself does not provide relief for those who are morally and conscientiously opposed to a particular war. It is imperative that steps be taken to redress whatever miscarriages of justice have occurred under these conditions as soon and as systematically as possible. Moreover, amnesty for those whose violations of law are based upon higher loyalties is a cherished possibility within the American tradition and compatible with the understanding of God as a God of mercy. Therefore, redress of grievances should include consideration of amnesty in appropriate cases."

In its recommendations to public authorities and the general society regarding public policy the Assembly

"Asks the Congress, the President, other officials and our fellow citizens for reconsideration of the plight of those young men who, in good and sensitive conscience, have found that they cannot participate in a particular war but have not had redress or relief under existing laws. We urge retroactive recognition of their claims and reduction of punitive sentences, together with appropriate amnesty as soon and as systematically as possible."

In a statement on "The Moral Crisis of the United States in Indochina" the 183rd General Assembly (1971) said:

"We * * * warn that the civil rights of dissenters are particularly vulnerable during times of national crisis and tension, and that therefore special diligence must be exercised by the Church, citizens, and the government to preserve those rights. We specifically urge Presidential amnesty for those who are imprisoned or expatriate for conscientious dissent to this war."

AMNESTY

Overture 141, from Maumee Valley Presbytery, requested the 185th General Assembly (1973) to take action "On Dealing with Peoples Alienated from Society by the Vietnam Conflict." It urged a Presidential Commission to determine a benevolent and just solution for such people, stressing the doctrine of grace and forgiveness.

The General Assembly recommended no action on that particular Overture, but adopted the following statement and recommendations concerning amnesty:

"In response to Overture 141, we know and respond to the saving love of Jesus Christ and therefore, we dare to be agents for God's Love in the world.

"The question of amnesty for those who have been in conflict with the government because of opposition to the war in Indo-China is much misunderstood. Solutions will arise as its moral and theological aspects are explored beyond merely political considerations. We must regain a proper perspective and remember that Christ's Church has a ministry of reconciliation with justice which includes attending to opposing views.

"Because official American participation in the ground war in Indo-China has finally come to an end since the General Assembly last spoke of amnesty, we believe that there is an urgent need for the church to study amnesty in depth. Such a study should include the historical, legal, political, moral, and theological dimensions of amnesty, stressing the unconditional nature of amnesty. Particular attention would be paid to all persons who might be affected by amnesty or further punishment. Study should lead to action in Christian concern to influence others, the media, and the government to achieve solutions that strengthen peace.

"Therefore, the 185th General Assembly (1973):

"A. Reaffirms the amnesty pronouncements of the 181st General Assembly (1969) and the 183rd General Assembly (1971).

"B. Urges that all congregations undertake a study of the question of amnesty in 1973–74 under the guidelines of this statement, using the materials now becoming available.

C. Requests the Program Agency to continue to provide adequate study materials and to affirmatively communicate to the church at large the urgency of the need for study and the availability of such resource materials.

D. Suggests that study of amnesty be considered as part of the peace priority program.

"E. Urges all United Presbyterians to prayerfully undertake a reexamination of their views on amnesty."

DRAFT REPEAL

The 185th General Assembly (1973), mindful of the longstanding position of the UPCUSA favoring repeal of the military draft, and mindful of the continuing dilemma posed for young men facing the question of registration for the draft, urges UPCUSA church members and judicatories to support the current move toward effective repeal of the draft law.

A Proposal for Developing an Amnesty Review Procedure

(By Richard J. Lorette, Associate Dean, School of Management, State University of New York at Binghamton)

My thoughts on amnesty are those of an individual citizen who has served combat tours as an Air Force flying officer in both the Korean and Vietnamese Wars. In addition, as a father, a university staff member and an involved American, I am concerned about young people generally.

First, in a time of considerable national stress, involving such problems as energy, inflation and Watergate, the responsibility of citizenship cannot be ignored. In 1783, George Washington said, ". . . every citizen who enjoys the protection of a free Government, owes not only a portion of his property (taxes), but even of his personal services . . ." to its defense. I agree with that statement.

Secondly, and perhaps one of the two most crucial elements, we must solve the amnesty problem by designing a process that most Americans will judge to be fair. I relaize, in making that statement, that I have restated the obvious. But, with any other outcome, the entire process can become an issue almost as destructive to the strength and unity of this country as was the Vietnamese War itself. Somehow we must develop a climate of understanding, compassion and tolerance; we must try to appreciate the sincere viewpoints of those whose feelings may be different from our own. And that word "feelings" is critical, because I think we are dealing much more with feelings and emotions than with logic or facts or "cut-and-dried" rules and regulations.

And so, to get started on the right foot, I believe we all should ask ourselves, "Who are we talking about, when we say that amnesty should be granted or should not be granted?" I hope that we don't have to "choose up sides" on this issue and "have at it." But if we do, let's first assure ourselves that we do in fact disagree. It follows, in my opinion, that the first step—in designing a procedure for what I have called the National Amnesty Project—will be to separate or classify or categorize those 30,000–40,000 (whatever the number is) young men into like groupings.

Some are deserters from military organizations. They may have "gone AWOL" from their army units in Germany, "jumped ship" in Japan or left their basic training squadron in Texas. In so doing, they have violated the Universal Code of Military Justice (UCMJ) and Federal Law and may be subject to courts-martial. Perhaps they were opposed to "the war."

Some may have deserted or evaded to avoid prosecution. Following World War II, President Truman's Amnesty Board, the Roberts Board, found that nearly half of the 15,805 draft evaders were men wanted for murder, robbery, desertion of their families and other serous crimes. Do those of us who support amnesty favor pardoning men who deserted or evaded to avoid prosecution and a possible jail sentence? Would these men even request amnesty if to do so would risk revealing their whereabouts to civil or military law enforcement authorities? As a brief aside with regard to those who may not desire amnesty, I don't think we whould be concerned initially with their cases. At a later phase of the process, we could review the appeals of parents who may wish to clear their family name or their son's name (in absentia).

Or do we favor only granting amnesty to the man who was willing to serve his country but not to fight in a war he believed to be immoral? Whatever the reason for deserting or evading, we cannot confuse the deserter with the evader. The young men we are discussing, and most were very young when they chose to evade, had been called to contribute that personal service George Washington referred to. They chose not to serve—*at that time*. Would they be willing to serve now? Would the armed services accept their service now?

Do those of us who oppose granting amnesty believe that draft evaders should be punished for deserting our country in its hour of peril? Did they *really* evade the draft in our country's hour of peril? We had not been attacked. War was not declared! Or did they choose not to serve in its hour of need (as opposed to "peril")?

Clearly, while many classifications are possible and perhaps appropriate, a beginning might be to divide the men into two basic groups: evaders and deserters. A second step of the procedure would be to discuss our classification scheme with the military services and civil law agencies; there may be some type of amnesty candidate we have not identified. At any rate, following these discussions, a final classification scheme would be selected.

The next step involves research into the records of the military departments and those of local draft boards. The object of this step is to find out approximately how many men fall into each of our classification categories. Each group might be handled in a different way; the size of the groups would have an impact on the procedure chosen.

Concurrently with the above steps, research must be conducted to evaluate the procedures used following past wars, perhaps going back as far as the American Civil War. Advantages and disadvantages of each should be listed. Efforts to determine the cost/man in dollars and time would be useful information. The outcome of this phase would be a series of recommendations as to which procedure or combination of procedures would be the most effective for the Vietnam evaders and deserters. A different procedure could be recommended for each of the different categories of amnesty candidates. Cost of the process (or processes) recommended must be estimated. Such estimates should include dollars per man reviewed, the duration of the total process, source of funding and manpower and amount of support to be contributed by state and federal governments.

Also concurrently, it would be possible to identify and list the potential results of appeals by different candidates. This process would primarily involve negotiation with military and civilian legal groups. For example, would the Air Force be willing to grant unconditional amnesty to a young man who had served honorably for 2½ years but had deserted when his unit received orders to go to Vietnam? On the other hand, if an 18 year old, just out of high school, had evaded on receiving his induction notice, would the Army accept two or three years service today as full restitution? According to the U.S. News and World Report (March 12, 1973), "The military services often have permitted *deserters* to surrender voluntarily and serve out their commitments without prosecution." The same source indicated that the ". . . Justice Department's policy on draft dodgers has been to allow a criminal charge to be dropped if the draftee agrees to a preinduction physical examination." From the young man's viewpoint, now that the U.S. ground involvement in Vietnam has ended, military duty in peacetime may provide a temporary source of income while he "finds himself" and decides what to do with the rest of his life. Alternatives to military service, such as VISTA or Peace Corps kinds of service organizations, should be considered. Possibly a formula can be derived that would combine an incomplete service tour plus "x" number of years in exile (or underground in the U.S.) and net this product to an equivalent number of required years in a non-military government service organization.

At some point in the design procedure, we should try to assess the beneficial effects of returning the tens of thousands (underground in the U.S.) to useful, law-abiding lives. How many of the 30,000 or so are now making their livings by unlawful activities? How many will eventually be caught, tried and sent to serve jail sentences, all at a dollar cost to the American taxpayer? At the same time, some thought should be given to the addition of these thousands to the welfare roles and/or ranks of unemployed.

The above information perhaps can be collected as part of the data collection phase. A data bank, with suitable guards against leaks or disclosure, would store information on names, ages, last-known addresses, social security number, military conduct record (if any), criminal record (if any) or draft evaders, etc. Regional site directors would be responsible for collecting such data as would be available at local draft centers. The Washington, D.C. Site Director would gather the information already available to the armed services and F.B.I.

A similar data-collecting and storing function relates to determining local, state and regional opinion on a small number of major questions about amnesty. National polling organizations (also political parties and church groups) may have information which can be updated to show 1974–75 thinking by the general public.

A later phase of the project's development of an amnesty procedure would investigate the method by which an evader or deserter would contact the amnesty-granting board (committee, panel or whatever). Should local neutral (interested laymen and attorneys) groups advertise and request letters or phone calls which would generate the mailing of an application form to the evader/deserter? Should parents be queried as to their sons' desires on the matter? Whatever method(s) is used, once names start coming in, should cases be handled on a "first come-first served" basis? Or should it be done alphabetically (after a minimum number has been received) or in chronological order from the individuals having deserted or evaded first?

Finally, if the overall process is to be completed in a reasonable amount of time, there must be a sizable publicity effort. It would rely heavily on the results of the earlier opinion polls and would stress national and regional support of the various steps being taken. Potential gains to amnesty candidates (in terms of renewed: rights to vote, eligibility to hold Civil Service positions and eligibility for G.I. benefits) should be emphasized in order to quickly generate as many candidates as possible. In order to encourage a decision (to request amnesty or not request it) by the men involved, a deadline for requesting consideration should be established. After that date, deserters would be subject to the standard UCMJ prosecution and appeals machinery without benefit of the options available from the amnesty procedure. The same applies to draft evaders. Obviously, due to the expense involved, the amnesty machinery cannot remain is session permanently.

The process can and should be handled in a fast yet fair, efficient manner. The sooner we get started on the actual review process, the sooner we can remove the uncertainty from the lives of these men and their families. And the sooner we can remove one more of the explosive issues dividing this nation.

A final point refers back to my earlier comment about the "feelings" of people and their viewpoints of the rightness or wrongness of amnesty. And I believe this next comment is second in importance to the point on deciding who we are talking about. It may even be more important. I refer to the "moment of truth." We cannot avoid the question of punishment and/or forgiveness versus the sacrifice of those who gave their lives in the Vietnamese War. In my opinion, neither President Nixon nor the Supreme Court nor even the Congress can forgive those who chose not to serve. Forgiveness cannot be legislated or decreed by executive order. Only the American people—acting singly or as small groups or even as towns and cities—can make this judgment. They must examine their own consciences and decide. The families of those who died, the thousands of cripples in V.A. hospitals and the many thousands who risked their lives in the combat zones—they must decide who will forgive or not forgive. Some will forgive and in time forget. Others will never forgive and will never forget. I believe that over the years the constant reminders—sometimes hastily averted glances and sometimes cutting remarks—from those who did not forgive and could not forget—will be worse punishment than the potential maximum five years in prison.

I feel personally that the degree of our involvement in Vietnam, Laos and Cambodia was a national mistake. It has been argued that many of the deserters and evaders came to that conclusion before the majority of Americans. At the same time, I think it could be said that deserting or evading was a personal error; it was the wrong answer to the right question. I believe it is time to recognize the imperfect nature of our political system and the fallibility of men; it is time to get on with the business of showing these young men our willingness to provide a way to "balance the books" to the extent that is possible.

A Christian Declaration on Amnesty—Peace Section, Mennonite Central Committee, Akron, Pa.

As a major chapter in the Indochina war ends, it is important that the suffering and tragedy of the millions of war victims in Southeast Asia and North America not be forgotten. In a real sense everyone is a victim—those who promoted misguided policies as well as those who suffer from the terror of bombs and napalm

and the thousands of civilians still imprisioned in South Vietnamese jails. Another group which continues to be victimized by the war, though they courageously refused to participate in it, are the thousands of fugitives from compulsory military service. It is for these persons that amnesty is needed.

I

Canada and the United States were once known by the nations of the world as lands of refuge for persons who opposed peacetime conscription or who refused to fight in wars. Among those who came for such reasons were some of our Mennonite and Brethren in Christ forebears. Many came as fugitives from compulsory military service. With the war in Indochina, this situation changed and the United States has now become a land from which men are fleeing. Canada, among other nations, has been the recipient of many of these fugitives of conscience.

Many Christians in Canada have rallied to aid those troubled, conscientious young men and their families; they have provided food, shelter and fellowship. These ministrations of mercy grew out of a deep sense of Christian obligation to help "the stranger within the gates." It was also a repayment, in many cases, for the hospitality and friendship given to those who earlier came to Canada as refugee-immigrants. We thank God for these demonstrations of love and compassion.

II

As Mennonite and Brethren in Christ Christians, we oppose all wars and believe that the refusal to participate in war is the Christian's duty. The Indochina war is no exception. Indeed this has been a particularly heinous war in the way it has been fought. It is our strong belief that Christ's message of peace and reconciliation is at the very heart of the gospel. From this perspective and with this concern we speak for amnesty, an action which we believe can help heal the wounds of the war.

Reconciliation and the restoration of civil rights can come through a general amnesty—an amnesty which will, as the word in its origin implies, forget the legal offenses because of a greater interest at hand. For us in this situation, amnesty is the law's ability to set aside its own power to indict and punish.

Many not faced with the life and death decisions of the draftee or a person in military service, see amnesty either as a generous act for youths who made a mistake or as forgiveness for those who broke the law. For Anabaptist Christians, the view is quite different. We join with many of these young men in believing that taking a stand against the immorality of the Vietnam war needs no forgiveness. The "premature awakening of conscience" should not cause the young men who early opposed participation in this immoral war to continue to be considered criminals. Indeed are these not a part of that creative minority who have helped to change American opinion from supporting war to the recognition that it was a fundamental mistake?

III

Most Mennonite and Brethren in Christ young men have refused military service for conscientious reasons and have accepted alternative service assignments. For some from our churches, however, the decision to refuse military service also led to questioning the validity of performing alternate service. This decision was usually the result of deep struggles of conscience and a serious attempt to be a faithful Christian disciple. These Mennonite young men, perhaps numbering several dozen, are part of the larger group of potential amnesty recipients.

IV

Several hundred thousand men may be affected by a general amnesty. Some of these have never been in the military. A minority of this group chose not to cooperate with Selective Service or the military in any way. Most Mennonites who would be recipients of amnesty are in this group. A larger group of men, however, did attempt without success to gain conscientious objector classification. Despite their opposition to all war, some of these were denied conscientious objector status, often because of administrative mishandling by Selective Service. Others were not recognized as conscientious objectors because they felt participation in some wars may be right, even though they believed participation in the Vietnam war was wrong. These men accept the just war position which calls on persons to discriminate individually between just and unjust wars. Most Christian churches take this position officially; it is not recognized legally, however.

These potential recipients of amnesty who were not in the military generally find themselves in one of three situations. First, they may already be convicted of draft law violations and be in prison, on probation, or released after serving a sentence as a felon. Since 1964, 7,433 [1] have been prosecuted and convicted thus losing some fundamental rights of citizenship. Another 17,200 [2] are awaiting prosecution. Second, they may be living in Canada or other countries to escape military service and prosecution. Between 30,000 and 40,000 [3] men are in this group. Third, they may be living "underground" in the United States or its territories and be liable for prosecution. No firm statistical evidence is available regarding the number of men in this group, but it is commonly estimated that this number is as large as that of the group which migrated.

V

The largest group of potential amnesty recipients did not initially claim conscientious objection to war. They were drafted or enlisted in military service and then discovered that their conscience would not permit them to continue performing such service. As a result, these men find themselves in one of three situations.

First there are those sentenced to military prisons after unsucessful attempts to otain discharges. Second there are those who were less optimistic about getting such discharges and deserted from the military; these men when apprehended are also subject to military prosecution for their actions. The third and largest group includes those who have received other than honorable military discharges for actions based on principled objection to war. These men face consequences somewhat less severe than a convicted felon, but carry a stigma as a result of the other-than-honorable discharge that may hinder future chances of employment or favorable character references.

VI

Amnesty is in the best tradition of the United States; eleven presidents have granted amnesty following wars and rebellions. A general amnesty was granted to all following the United States Civil War—even to those found guilty of treason.

The time has come again to bind up the nation's wounds, wounds resulting this time from the Vietnamese war. Amnesty will help reconcile the nation and a large group of its alienated sons.

VII

In light of the above considerations, the Peace Section of the Mennonite Central Committee:

1. Asks our congregations to welcome back those who because of conscience violated the Selective Service Act or Military Law to avoid military service.
2. Urges our Mennonite and Brethren in Christ bodies to support a universal amnesty which without being punitive would restore all civil rights to those having refused military service for conscience sake.
3. Appeals to the United States Government to recognize the value of the witness of the men who opposed the war by restoring full civil rights with impunity to these men.
4. Commends those governments such as Canada which admitted young men who chose to leave the United States rather than to fight in the Vietnam war.

This statement—A Christian Declaration on Amnesty—represents the consensus of the Peace Section of the Mennonite Central Committee. The document was prepared to generate honest discussion and to help to focus the moral and theological issues regarding amnesty.

Both within the Christian churches of North America and within the larger society, there is a broad diversity of thought concerning amnesty for those who would not participate in the Vietnam war. It is an issue which must be faced and ultimately resolved. The Peace Section has attempted to state with clarity and precision the position which it feels is consonant with our Mennonite theology of peacemaking and reconciling.

WALTON HACKMAN,
Executive Secretary, Peace Section.

---

[1] Administrative Office of U.S. Courts.
[2] Department of Justice 1972 Draft Violators, Selective Service 1973 Draft Violators.
[3] National Interreligious Service Board for Conscientious Objectors.

A PRELIMINARY STATEMENT ON AMNESTY AND RACE, SUBMITTED BY THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION, PROJECT ON AMNESTY

The United States Government's war in Southeast Asia tore up the countries and peoples of Indochina for an entire decade. It wreaked enormous havoc also in our own country. The war divided our society, deepened our bitterness, aggravated our violence-prone disposition, diverted our attention and resources into destructive channels, and forced millions of young men to choose between either obedience to rhw law or their own sense that this was a useless war in which to kill others or to be killed.

Most of the men who were of military age during the war in Vietnam dodged the draft and the war. Of the tens of millions who were of draft age, only about eight million, a small proportion, ever saw military service. The others had personal disabilities, exemptions, deferments, luck or courage. No more need be said here than that almost every young man whose father had the money to get him a college deferment was able to escape the draft and the war. Some hundreds of thousands directly refused participation in the war, even if that meant violating laws that the courts have upheld; they are the war resisters, whether convicted or underground or in exile. Among them, the proportion of blacks may be small, though a great many young men in the black community continue to be subject to federal prosecution for failing to register for the draft.

Of the eight million-or-so Vietnam-era veterans, about 11% to 13% are thought to be black, or approximately a fair share. About 450,000 of these veterans have "bad paper" (i.e. less-than-honorable discharges from the military), and the proportion of blacks among these is far more than a fair share. Some of the ways in which the draft boards and the military services (in their systems of justice, their assignments, and their discharge practices) massively discriminated against blacks and other minorities are reviewed in the attached memorandum.

Like virtually everything else that this society touches, the draft, the military, and the war imposed their burdens in greatly disproportionate measure upon the poor, the ill-educated, the blacks and other minorities. They were drafted in greater numbers, were assigned in greater numbers to the front-line fighting units and to unskilled and dead-end military jobs, they were wounded and killed in greater numbers, they were abused by the system of military justice, and they were finally ejected from the machinery in greater numbers with records that blight the rest of their lives. It is in this context that the issue of a universal and unconditional amnesty for all those who suffer disabilities from the draft and the military is of great and urgent importance to the black community of this country.

There are increasing efforts under way, locally and nationally, to provide discharge-upgrading services for Vietnam-era veterans. The tedious review process and the inevitable litigation will overcome some of the abuses of the recent past, and more aggressive class-action litigation in the federal courts has already begun to make some systematic inroads on the worst after-effects of military racism and discrimination with respect to discharges.

Ultimately, however, only a small number of the men involved are likely to benefit from such an important but necessarily limited discharge-upgrading effort. What is needed is a change of social policy with respect to veterans and to the system of military discharges. Social policy, in this area, will be expressed in two ways: One is legislation that would eliminate administration discharges entirely and would end the military stigmatization of men who have displeased the military system of values. The other is a universal and unconditional amnesty, one that would remove all criminal and civil disabilities arising from the draft, the military, and the war, including the expunging of bad discharges and the issuance of a uniform certificate of military service which would not prejudice a veteran's life after his military experience.

A startling proportion of the black prisoners in the jails and penitentiaries of this country are men with less-than-honorable discharges. The vicious circle of discrimination in the discharge process aggravates the drug-abuse problem in the ghetto communities, the problem of crime, of unemployment, of cynicism and mutual destructiveness. A universal and unconditional amnesty for the hundreds of thousands of men whom this country continues to victimize in the context of a catastrophic war that we have ended, will not only be an act of social decency and political justice but will also bring about direct and substantial benefits to the minority community of this country. The members of the Black Caucus in the Congress have recognized this. The voices of the leaders of the black community in this cause will be essential.

MEMORANDUM—SUBJECT: RACE AND THE MILITARY SERVICES

During the war in Vietnam, national leaders of the civil-rights movement persistently protested the devastating distortion of national priorities caused by our commitment to that war. As early as 1967, Martin Luther King, Jr. said, "We are taking the young black men who have been crippled by our society and sending them 8,000 miles away to guarantee liberties in Southeast Asia which they had not found in Southwest Georgia and East Harlem." [1] In 1971, a national survey showed that, by a margin of two to one, black Americans felt that their sons and relatives were fighting a disproportionate share of the war.[2] This report describes some of the ways in which the black soldier bore (and the black veteran now bears) an unequal share of the burdens imposed by the Vietnam war.

THE SELECTIVE SERVICE SYSTEM

The inequities of the Selective Service System began with the composition of the local draft boards, which were made up almost entirely of white professionals and white salaried officials.[3] In 1967, only 1.3% of all local draft board members were black.[4] Moreover, the black young men who were among the poor in our society faced a bias in two additional ways: they were not as apt to be eligible for college deferment and they could not easily get into the Reserves. As a result, black men were drafted in far greater proportion that whites.[5]

MILITARY ASSIGNMENTS AND PROMOTIONS

Black servicemen were assigned, to a significantly high degree, to a few limited fields and to the lower pay grades. A serviceman's score on the Armed Forces Qualifications Test (AFQT) determined the branch of service and the type of outfit to which he was assigned. The Department of Defense has reported that blfflcks receive "markedly lower" AFQT aptitude scores than white soldiers.[6] In all services, black servicemen were consistently placed in a less favorable "Mean Mental Category" than white servicemen on the same educational level, even though the DOD admitted that this was an exceptionally crude measure, based on the AFQT score.[7] As a result, black soldiers wound up in disproportionately large numbers in active combat and were more likely to be killed in action.[8] Black servicemen were more often assigned to the so-called "soft-core" career fields (such as Food Service, Supply, Administration and Transportation) than to technical or "hard core" fields.[9]

In the Army generally as well as in Europe in particular, black servicemen were in substantially lower pay grade categories than white servicemen.[10] The promotional slots available at any given time, moreover, were few in "soft" as compared to "hard core" fields. Thus, the system was similar to the "tracking system" employed by many school systems.[11] A DOD Task Force report acknowl-

---

[1] Quoted in, The American Military, edited by Martin Oppenheimer, Aldine Publishing Co., 1971, "Black Veterans Return," by James Fendrich and Michael Pearson, p. 165.

[2] *Ibid.*, p. 166.

[3] A Conflict of Loyalties, edited by James Finn, Pegasus, New York, 1968, "The Selective Service System: Actualities and Alternatives," by Arnold S. Kaufman, p. 241. Mr. Kaufman cites the Report of the National Advisory Commission on Selective Service, Chairman, Burke Marshall (U.S. Government Printing Office, 1967).

[4] *Ibid.*

[5] In 1967, although only 18% of whites who qualified for service were actually drafted, 30% of qualified blacks were compelled to serve. (*Ibid.*)

[6] The Search for Military Justice, Report of an NAACP Inquiry into the Problems of the Negro Serviceman in West Germany, NAACP Special Contribution Fund, 1971, p. 1.

Among Army men with 19 to 24 months of service, about 23% of the whites have scores of 30 or lower, compared to over 72% of black servicement with the same scores. (*Ibid.*)

[7] Report of the Task Force on the Administration of Military Justice in the Armed Forces, Volume IV, Department of Defense Publication, p. 44.

[8] Though comprising only 11% of the population during the first 11 months of 1966, 22.4% of Army men killed in action were black. (Report of the National Advisory Commission on Selective Service, 1967. Cited by Arnold S. Kaufman in *A Conflict of Loyalties*, p. 241).

[9] In the Air Force, 37% of the personnel assigned to Service and Supply units were black, as of January 1971, as were 25% of those in Administration. (The Search for Military Justice, p. 1).

[10] Among non-high school graduates who scored between 31 and 40 on the AFQT and who were assigned to the Infantry, 30% of the blacks were at pay grade of E–3 or lower compared to only about 14% of white soldiers at that pay grade level. Less than 20% of the black soldiers in this group were at a pay grade of E–5 or higher, compared with 27% of the white soldiers. (The Search for Military Justice, p. 3).

[11] *Ibid.* p. 2.

edged that the disparity between the two racial groups with respect to concentration of personnel in hard and soft core skill fields was a contributing factor to the "greater proportion of job dissatisfaction complaints on the part of black personnel, which in turn may have a bearing on the disciplinary action rate of this minority group." [12]

The need for more black officers was high on the list of recommendations of enlisted men for improving race relations within the military. There was a dearth of black officers in the services,[13] and, for the most part, they wound up in Staff, as distinguished from Command, jobs. Black officers voiced dissatisfaction with their rate of advancement and the "dead-end" assignments they drew.[14]

ADMINISTRATION OF MILITARY JUSTICE

According to the report of an NAACP inquiry into the problems of the black servicemen in West Germany, "there are two levels of military justice—the judicial and the nonjudicial—and neither is working properly." [15]

Judicial Action

Judicial action refers primarily to court martial procedure. A disproportionately large number of black prisoners served sentences in military correctional or confinement facilities as the result of conviction and sentence by courts-martial. In January 1971, two out of every five prisoners were black. Later that month, the black percentage increased to 50%.[16] Of the G.I.'s in confinement facilities surveyed by the Task Force, 37.8% were black, whereas in June 1972, black soldiers made up only 11.5% of the armed forces.[17]

The average sentence was longer for black prisoners (3 years) than for whites (2.5 years).[18] Blacks received a longer sentence to confinement at hard labor (2.88 years to 1.91 years), and had a larger percentage of sentences which included total forfeitures of pay and allowances (84.7% to 76%), and punitive discharges (99% to 94.8%).[19] Among the soldiers convicted of civilian type felonies, the average sentence to confinement was 3.02 years for blacks to 2.54 years for whites. More blacks received a punitive discharge (98.25% to 90.32%) and total forfeiture (86% to 74%) than whites.[20]

The Task Force, in profiles of black and white prisoners, gave data on geographical and family background, pre-service and prior service records, and observations by social workers and psychiatrists. Most white prisoners were raised in rural areas or towns of under 50,000 pupulation, whereas a majority of blacks spent their childhood in large urban centers.[21] Black prisoners were more likely than whites to come from families with low incomes and from broken families.[22] In the court-martial convictions which led to placement in the Air Force retraining program, the most common offense was Absence Without Official Leave (AWOL), whites committing a higher percentage of AWOL and drug-related offenses, blacks a higher percentage of offenses which tend to directly confront or challenge military authority or are equivalent to civilian felony offenses.[23] The NAACP team found that more than three out of five soldiers convicted for the major offense of willful disobedience were black.[24]

Nonjudicial Action

Nonjudicial action refers to the administration of discipline at the company command level, without due process procedural protection. The following facts pertaining to "Article 15's" and pretrial confinement give further evidence that the military system of justice bore down more heavily on the black serviceman.

Article 15's.—The Uniform Code of Military Justice sets forth, in Article 15, the authority of the Commanding Officer to impose nonjudicial punishment on enlisted men for infractions of regulations. Under the Code, a soldier may choose to have a trial by court-martial instead of accepting Article 15 punishment. Yet there is a lack of black military-justice personnel available. In Europe in 1971,

---

[12] Task Foce, p. 106.
[13] The average ratio of officers to enlisted men in all the services as of June 1972 was 1 : 5.9 for white servicemen compared to 1 : 31.7 for black servicemen. (Task Force, p. 303).
[14] The Search for Military Justice, p. 4.
[15] *Ibid.*, p. 5.
[16] *Ibid.*, p. 10.
[17] Task Force, p. 103.
[18] *Ibid.*, p. 57.
[19] *Ibid.*, p. 61.
[20] *Ibid.*, p. 63.
[21] *Ibid.*, p. 99.
[22] *Ibid.*
[23] *Ibid.*, p. 107.
[24] The Search for Military Justice, p. 10.

only one of forty part-time military judges was black. One of the six full-time judges was black. Yet these 46 judges tried nearly all the special court-martial cases. Among the 123 Judge Advocate General (JAG) Captains in Europe (excluding the two black judges), none was black. There were no black JAG officers in the European Command who were available to engage in defense work. No civilian lawyer giving legal counsel to military defendants was black.[25] Because a black soldier was not likely to expect the legal assistance provided by the military to be objective and appropriate,[26] he usually accepted Article 15 punishment without consulting a lawyer about its implications, one of the most important being that court-martial carries with it a right to appeal, whereas Article 15 does not.

It was widely held that some of the manifestations of black awareness by black soldiers—Afro hair styles, power salutes, even talking with the NAACP interviewers—led to confrontations with white superior officers.[27] In West Germany, blacks received punishment at double the rate of whites for disrespect, disobedience, insubordination, "provoking gestures" and assaults.[28] NAACP researchers were told by Army officials in Washington that enlisted black soldiers received nonjudicial punishment at a higher rate than whites. The researchers were told to assume, moreover, that units in West Germany with a high percentage of Article 15 proceedings contained a high percentage of black soldiers.[29]

Pretrial Confinement.—Army regulations specify that soldiers placed in confinement may be held up to 30 days without charges being filed against them. The Regulations are explicit in describing the circumstances under which a soldier may be held in pretrial confinement. Yet, "the informality of nonjudicial action invites abuse," [30] and Commanders often used pretrial confinement for purposes other than those set out in the Regulations. Nearly one-third of all releases from the stockade in 1970 were for the reason, "pretrial not required." [31]

Half of the black soldiers in military jail in 1971 were held in pretrial confinement; sometimes more than three out of five black prisoners were being detained under this provision.[32] Just as in civilian penal experience, the soldier who had already been detained in pretrial confinement often became an object of harassment and suspicion and was likely to be returned to the stockade later for a more serious offense.[33]

Military Discharges

A discharge below the category of honorable carries with it a lifetime of social stigma, reduced employment opportunity and diminished government benefits. Most black soldiers who spoke with the NAACP interviewers were convinced that administrative discharges generally and unfitness discharges in particular were a form of punishment "inflicted on the black soldier exclusively." [34] In all services, black soldiers received a lower percentage of honorable discharges and a higher percentage of general and undesirable discharges than whites of similar educational levels and aptitude.[35] Black soldiers under the European Command in 1971 received 45% of all discharges below the category of honorable.[36] Although nonwhite, non-English speaking enlisted people made up 9 to 11% of the composition of the Vietnam era armed forces, they received 24% of the other-than-honorable discharges.[37] In recognition of the fact that black veterans receive a disproprotionately high number of less-than-honorable discharges, a recent decision of the Equal Employment Opportunity Commission holds that to require job applicants who are veterans to have an honorable discharge, in and of itself constitutes racial discrimination.[38]

---

[25] *Ibid.*, p. 13.
[26] *Ibid.*, p. 14.
[27] *Ibid.*, p. 1.
[28] *Ibid.*, p. 6.
[29] In Berlin in 1971, black soldiers were some 15% of the total command but received one-third of the Article 15's. (The Search for Military Justice, p. 6)
[30] *Ibid.*, p. 9.
[31] *Ibid.*, p. 8.
In 1970, 3,272 people were released from the stockade; 912 (28%) were released without charges of any kind filed against them. (The Search for Military Justice, p. 8)
[32] *Ibid.* A chart drawn by the NAACP team showing confinement data for the second half of 1970 indicates that 50% of the prisoners held in pretrial confinement during that period were black. (The Search for Military Justice, p. 9)
[33] *Ibid.*, p. 10.
[34] *Ibid.*, p. 15.
[35] Task Force, p. 149.
[36] *Ibid.*, p. 15.
[37] Backgrounds: Other-than-honorable Discharges—Problems, and Prospects for Change, Released by Vietnam Era Veterans' National Resource Project, Emergency Ministries Concerning the War, National Council of Churches, 1974.
[38] Decision 74–25, Sept. 10, 1973.

Certain reasons for separation are invoked more frequently against personnel of a particular race. In all services, drug abuse accounts for proportionately more of general and undesirable discharges for whites than for blacks of similar education and aptitude.[39] In all services, discreditable incidents account for proportionately more of general and undesirable discharges for blacks than for whites of similar education and aptitude.[40] Thus, the reasons for administrative discharges correspond to the reasons for court martial proceedings against personnel of a particular race.

There is a consistent disparity in the type of discharge issued to servicemen of different races, whites receiving a higher percentage of honorable discharges than blacks for the same reason for separation.[41] Moreover, the branches of service evidence no uniformity in the type of discharge they award for a particular reason. "Such lack of uniformity," concludes the Task Force report, "vitiates the ultimate classification of service as honorable, general, or undesirable." [42]

Faced with the possibility of an administrative discharge, a soldier was often ignorant of the alternatives in his situation. In many cases, a soldier was told that unless he signed a waiver that allowed an administrative hearing to discharge him with a general or undesirable discharge, he was going to be tried and convicted by a court-martial.[43] In accepting an administrative discharge, a soldier often did so believing he could later get his discharge upgraded.

Discharge Review.—Only 5% of requests for upgrading a discharge were granted in 1970.[44] Moreover, data collected from the Discharge Review Boards in 1972 reflect a higher incidence of relief granted to white than to black applicants. Of the 1,217 cases heard by the Boards, 289 or 30.9% of the 936 white applicants obtained relief. Of the 269 black applicants, 55 or 20.4% obtained relief.[45]

Veterans who are able to make personal appearances before the Boards have a greater chance that their applications for upgrading will be successful. Yet, since the Review Boards are located in the Pentagon, the chances of successful appeals are reduced for those veterans who cannot afford to travel to Washington, D.C

Continuing Penalties.—The penalties attached to military discharges lead many veterans to a hopeless track of unemployment, drug addiction, poverty, crime and imprisonment. There are figures that indicate that 20 to 35% of our prison population consists of Vietnam era veterans with other-than-honorable discharges.[46] A Sept. 1973 study of the Essex County Jail in Newark, N.J. by a member of the National Fraternity of Veterans revealed that, of 518 people being held over for trial because of inability to afford bail, 35% were Vietnam era veterans. All but two of these veterans were black and all had been arrested within a year of being discharged.[47]

SUMMARY

Black servicemen frequently were in the military as a last resort. They were often not prepared by prior education or training for skilled in-service work. They were typically given "soft core" jobs or placed in active combat. They were more likely than at any other time in history to rebel against the manifestations of white racism in the military. They were thus disproportionately more liable to receive punishment by the military justice system and now suffer its consequences more acutely in civilian life.

BIBLIOGRAPHY

1. *A Conflict of Loyalties*, edited by James Finn, Pegasus, New York, 1968, "The Selective Service System: Actualities and Alternatives," by Arnold S. Kaufman, pp. 240–262.

2. *Backgrounds: Other-than-honorable Discharges—Problems, and Prospects for Change*, Released by Vietnam War Veterans' National Resource Project, Emergency Ministries Concerning the War, National Council of Churches, 1974.

3. *Report of the Task Force on the Administration of Military Justice in the Armed Forces*, Department of Defense Publication, Volume IV, November 1, 1972.

[39] *Task Force*, p. 157.
[40] *Ibid.*
[41] Charts 23 of the DOD Task Force report show that: in all the services, whites received a higher percentage of honorable discharges than blacks when separation is effected for character or behavior disorders; in the Army and Navy, the same holds true for motivational problems; in the Army, Navy and Air Force, the same disparity holds true for separation for inaptitude. (Task Force, p. 183, 207, 232, and 255)
[42] *Ibid.*, p. 158.
[43] Backgrounds, p. B/I–4.
[44] The Search for Military Justice, p. 15.
[45] Task Force, p. 288.
[46] Backgrounds, p. B/I–11.
[47] *Ibid.*

4. *The American Military*, edited by Martin Oppenheimer, Aldine Publishing Co., 1971, "Black Veterans Return," by James Fendrich and Michael Pearson, pp. 163–178.

5. *The Search for Military Justice*, Report of an NAACP Inquiry into the Problems of the Negro Serviceman in West Germany, NAACP Special Contribution Fund, 1971.

Troubled Peace—An Epilogue to Vietnam: The Nader Report on Vietnam Veterans and the Veterans Administration

(By Paul Starr, with Jim Henry and Ray Bonner, introduction by Ralph Nader)

To the soldiers who come home with drug problems and to the men who come back physically disabled must be added still another group who carry with them the bitter legacies of the Vietnam War—those who return marked dishonorable and unfit. From the Gulf of Tonkin Resolution in 1964 through the summer of 1972, more than 175,000 soldiers were dismissed with less than honorable discharges.[1] If the reception that other veterans have received has been ambivalent, the homecoming these men have faced has been even more dismal.

Were their discharge papers their only handicap, the prospect for these veretans might not be that serious, but typically a bad discharge is only the most recent problem in a biography of misfortune. Often poor, almost always with limited education, disproportionately black, veterans with less than honorable discharges have a series of strikes against them. Employers who have more than enough jobless veterans to choose from will consider these men last and usually not at all. Even if they had a job before being drafted, the character of their discharge precludes them from asserting legal rights to reemployment upon return.

It is generally assumed that less than honorable discharges also legally bar a veteran from receiving hospital care, educational allowances and other VA benefits. This is true, however, only for the relatively small proportion of such men who were dismissed through general court-martial. The vast majority of Vietnam veterans with bad discharges received them as a result of administrative action by the military, and the decision to deny these men benefits belongs to the VA. These decisions are made entirely within the agency, without clear statutory guidelines, without a firm set of definitions and without any opportunity to appeal to the courts. One might also add that the decisions have been made without peer representation, without sympathy and without any sense of the larger social consequences of compounding the men's problems.

In most discussions of military discharges and their ramifications, the role of the VA is given little attention. The focus primarily centers on the military justice system and discrimination in civilian employment. Our concern here will be to look more closely at the administrative discharge process and at the procedures used by the VA to deny benefits to administratively discharged veterans. As will become evident, these administrative decisions affect a greater number of men than the rulings of the military judiciary and involve the most questionable practices.

The Discharge Hierarchy

Up until now, we have spoken loosely of "dishonorably discharged" veterans or men with "bad discharges." To understand the discharge system, however, a more precise use of terms is necessary.

Technically, there are five types of discharges the armed services grant to outgoing enlisted men: (1) Honorable; (2) General; (3) Undesirable; (4) Bad Conduct; and (5) Dishonorable.[2] The names can be somewhat misleading to a civilian. For example, both Honorable and General Discharges are granted "under honorable conditions." Hence when a serviceman is said to have been discharged "under less than honorable conditions," it means he received either an Undesirable, Bad Conduct, or Dishonorable Discharge. It is this group that has numbered over 175,000 during the Vietnam War.

Military discharges are distinguished in a second way. The first three discharges (Honorable, General and Undesirable) are "administrative," whereas the last two (Bad Conduct and Dishonorable) are considered "punitive" and can only be granted after court-martial. In other words, if the military seeks to discharge a man "under less than honorable conditions," it must conduct a court-martial—except in the case of an Undesirable Discharge. To get a little bit ahead of ourselves, what has basically happened over the past few years is that as constitutional protections have been introduced into the court-martial system, the military has increasingly relied on Undesirable Discharges as a way of circumventing the legal process. Administrative action is much simpler and can be just as damaging to the veteran.

The vast majority of discharges, over 90 percent in every year, are Honorable. If a soldier has performed "proficiently," he is likely to receive an Honorable Discharge even if he has one or two minor violations of military discipline on his record. If, on the other hand, his record is neither "sufficiently meritorious to warrant an Honorable Discharge" nor sufficiently egregious to warrant a discharge "under less than honorable conditions," the military then grants the man a General Discharge—which is honorable in the general sense of the term though not Honorable in the strict sense. Soldiers who receive General Discharges have no opportunity to object or appeal or answer whatever charges were privately made against them. The argument for denying the men these rights is that they are still entitled to all their veterans' benefits and therefore have no adequate cause for complaint. Nevertheless, it should be noted that General Discharges do carry some stigma in the labor market and consequently probably do interfere with smooth adjustment to civilian life.[3] During the years of the Vietnam War, the military has given over 200,000 General Discharges, three percent of the discharge total.

Bad Conduct and Dishonorable Discharges are much less common, never amounting to more than one percent of all discharges in any recent year. Dishonorables may only be imposed by a general court-martial (i.e., one convened by an officer the rank of a general) and are the most severe discharges soldiers can receive. They are rarely imposed and then only in the most serious cases, such as murder, violent assaults and extensive dealing in hard drugs. During the Vietnam War, a yearly average of only about three of every 10,000 men released were given Dishonorable Discharges. Bad Conduct Discharges averaged about ten times that number during the same period. They are imposed not only by general court-martial, but also by special court-martial, which can be convened by a middle ranking officer and does not require a formal preliminary investigation.

At the middle of the hierarchy of discharges stands the Undesirable. Like Honorable and General Discharges, it is "administrative" but like Bad Conduct and Dishonorable Discharges it carries heavy penalties in civilian life. It is given most often for drug abuse, frequent acts of misconduct, homosexual acts and conviction by civil authorities of an offense involving "moral turpitude" or imprisonment for more than one year. Although Undesirable Discharges are imposed without the formal protections of a court-martial, they are every bit as punitive as the punitive discharges only courts-martial are allowed to impose. In fact, to many civilians the term "Undesirable" on a discharge paper suggests a deepseated personality problem, while "Bad Conduct" sounds much less serious—like the comment a school teacher might make on a report card. Part of the handicap of an Undesirable Discharge is that it suggests more than it proves, and this is precisely why it is so dear to the military, which often cannot prove as much as it wishes to suggest.

OUTFLANKING THE LAW

The relative importance of Undesirable Discharges is at once apparent from military statistics. During the Vietnam War (fiscal years 1965 to 1972, inclusive), the armed services dismissed 148,194 men with Undesirable Discharges—or six out of every seven who received a discharge less than honorable. Thus to speak of bad discharges is primarily to speak of Undesirable Discharges; to call into question the administrative discharge process is to cast doubt on the legal status of the vast majority of less than honorably discharged veterans.

Further inspection of the Defense Department's data discloses significant increases in the number of Undesirable Discharges in the last years of the war—both absolutely and relative to the total number of discharges. Until 1969, Undesirable Discharges averaged 11,500 annually; in fiscal 1970, they jumped to 22,537 and in 1972 to 40,018. Whereas in 1969 Undesirables represented 1.08 percent of a total of 1,028,951 discharges, in 1972 they represented 4.49 percent of a total of 890,354 discharges. Thus in spite of a decrease in separations, the number of Undesirable Discharges went up.

This increase is especially surprising because of changes in the military's policy toward drug abuse. As mentioned earlier, in July 1971—the beginning of fiscal year 1972—the Defense Department announced it would not impose Undesirable Discharges on men who were identified as drug users through urinalysis tests or who volunteered for treatment under the amnesty program. If urinalysis testing and amnesty have been successful and if the military has carried out its professions of good faith, there should have been a decline in Undesirable Discharges. In that light the figure of 40,000 Undesirables for 1972 acquires even more significance.

Part of the increase may have been due to the widespread malaise within the military and the deterioration of discipline and morale. But a substantial proportion may be traced to increased legal protections extended to defendants in special courts-martial. Beginning in fiscal year 1970 (the year in which Undesirable Discharges first increased 100 percent over the previous year), no soldier could be given a Bad Conduct Discharge unless he was afforded the following rights, in addition to those already present in a court-martial:

A defense lawyer. Previously a defendant was entitled to a lawyer only if the prosecutor was a lawyer.

A lawyer sitting as the military judge. Previously there was no requirement that any member of a special court-martial panel be a lawyer.

A verbatim record of the trial. Previously a summarized record was sufficient.

These changes strengthened the defendant's position in several ways. Lawyers in the military are rarely career soldiers; they identify less with the military as an institution than with the law as a profession. Consequently, as defendant's counsel or as judge, they were more likely to adhere to the explicit dictates of the law than to follow the implicit wishes of a commanding officer. And if the judge did place the demands of the service above the demands of the law, there was always the automatic review procedure that would be more meaningful now that a verbatim transcript was available.

To close some loopholes, however, was only to encourage the military to exploit others more thoroughly. As a result of the reforms in the judicial system, the unreformed administrative system was put into heavier service. It was, so to speak, a process of elimination. A commanding officer who wanted to get rid of a man would often send him to an administrative discharge board instead of to a court-martial, where his legal rights might protect him from being discharged. True, some punitive sanctions were sacrificed—the administrative discharge board could not send a malefactor to the stockades—but then, the right discharge was likely to come swift and certain.

Members of a discharge board, as the name suggests, do not have a variety of penalties available to them.[4] They have a simple choice: either retain the soldier on active duty or discharge him with an Undesirable, General or Honorable Discharge. Even before the case begins, they know one thing for certain. The "old man" wants this particular troublemaker out of the service. If he wanted any other punishment, he would have sent the soldier before a court-martial. Board members also have more than an inkling of what kind of discharge the "old man" would like them to impose. Honorable and General Discharges do not require hearings. If he favored one of those, he would have granted it himself. So even before a word is said at the hearing, the "old man's" verdict is in and since he happens to be the commanding officer of the members of the discharge board, he gets paid more attention than most old men usually do.

The board will ordinarily have no trouble doing what is expected of them. For the soldier facing discharge who attempts to defend himself does not have available many of the most significant rights and protections normally present in a judicial proceeding. He also has a certain incentive to accept the will of the military since a discharge, even an Undesirable, will at least get him out of the service. "Copping" an Undesirable yields relief of an immediate problem at the cost of shame later in life. Like the tatoo picked up by a young sailor on leave in an exotic port, it will remain with him as a stigma with little chance of ever being effectively removed.

Soldiers to be brought before an administrative board receive notice that a hearing will be held and must be apprised of the charges against them. If they choose to resist an Undesirable Discharge, they have the right to be represented by a lawyer and to make a personal appearance at the hearing (unless they are confined on a civil charge, in which case they lose that opportunity).

The accused do not have the right to confront all witnesses against them, a right guaranteed by the Constitution in all criminal proceedings, including trial by court-martial. The case against them may be presented solely on the basis of documents. Moreover, the administrative board does not have subpoena power, which makes it all the more likely that witnesses will not appear in person. If, for example, the person who prepared the investigation—usually a military policeman—has left the service or been transferred and is no longer available, the defendant will have no opportunity to cross-examine him on the allegations he has made. Lacking the vehicle of cross-examination, the defense case is often critically weakened.

The defense is weakened in another regard as well. While at a court-martial the government must prove the defendant's guilt "beyond a reasonable doubt," it only needs a "preponderance of the evidence" at an administrative proceeding. This is a much easier standard for the government to meet. Standards of evidence are also reduced. The rules of evidence applicable at a court-marital are applied only as strictly as the senior member of an administrative board desires. Since he is not a lawyer, he is not required to rule on objections made to the admissibility of evidence; his only duty is to note any objections for the record. But the record is not verbatim and consequently the objection may never actually be reviewed.

A further problem is double jeopardy. If a commanding officer convenes a court-martial, which acquits the defendant on a legal technicality, or convicts him but does not impose a discharge, he may simply send the soldier before an administrative discharge board on the same charges. The Defense Department specifically authorizes this double shot:

"No member will be administratively discharged under conditions other than honorable if the grounds for such discharge action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof, *except when such acquittal or equivalent disposition is based on a legagal technicality not going into the merits.*" [5]

Among the legal technicalities "not going into the merits" are violations of Fourth Amendment protections against unreasonable search and seizure and violations of Fifth Amendment protections against forced confessions.

Many cases involving drug use hinge on the issue of whether evidence was obtained in violation of the constitutional guarantee against unreasonable search and seizure. Often a commanding officer sends a soldier accused of drug use before a court-martial even when the admissibility of the evidence is doubtful. If the court then decides the search was unconstitutional, the general can convene a discharge board that is more responsive to his wishes.

An actual case will illustrate how the system works.[6] Bill, a corporal in the Marine Corps who had served more than three years without any involvement of a discreditable nature, was charged with five counts of possession of marijuana. His case was referred to trial by a general court-martial, where the maximum sentence would have been 25 years in prison. The preliminary investigation indicated there was only enough admissible evidence to charge him on one of the counts, which involved the possession of such a small amount of marijuana that it was actually described in the official charge as "debris." The court found him guilty and imposed a sentence of two months' confinement. Since he had served more than three years without any trouble, the court understandably did not order that he be discharged. By the time the trial concluded, Bill had less than two months remaining on his obligated service, at which time he would have received an Honorable Discharge. But the general was determined this would not happen. By law, he could not impose a greater sentence than the court had awarded. So he rushed Bill's case before an administrative discharge board, which complied with his desires, snatched Bill's Honorable Discharge from him and dismissed him as an Undesirable.

It was easier for the board to deprive Bill of his Honorable Discharge than it was for the court because the board had evidence of all five counts before it. Bill had been tried by the court-martial on only one count because the preliminary investigation had revealed that evidence on the other four had been obtained in violation of the Fourth Amendment. The board was able to hear this evidence, however, because such protections do not apply in administrative proceedings. Furthermore, the board had read to it the testimony of a confidential informant that the reason only debris had been found was because Bill had been forewarned that his foot locker was going to be searched. Had the government used this statement at the court-martial, it would have had to reveal the identity of the informant. Anonymous testimony was accepted, however, by the discharge board.

Other abuses of the administrative discharge process are more subtle. In Okinawa a few years ago, a soldier charged with three counts of selling marijuana was found guilty by a special court-martial and sentenced to six months in jail and a Bad Conduct Discharge. A review by the general's legal staff, however, indicated that two of the charges were legally deficient. The general's legal advisor doubted whether the court of military review (the first level of review outside of the defendant's chain of command) would uphold the issuance of a Bad Conduct Discharge for the conviction of only one count of selling marijuana. Consequently the general disapproved the Bad Conduct Discharge, but approved the six

months' confinement. He then ordered the soldier before an administrative board, which imposed an Undesirable Discharge. What the general could not accomplish legally he accomplished administratively.

The issue in these cases is not whether the particular individual involved should have received an Undesirable Disharge. The issue is rather the ease with which the system is manipulated and the lack of protection the average soldier has in administrative proceedings.

A LIFE SENTENCE

Before a soldier receives an administrative discharge, he is counselled by lawyers and others as to what obstacles he may encounter in civilian life. One Army form that he is required to sign before exercising or waiving his right to a hearing includes the following statement:

"I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to me. I further understand that as a result of the issuance of an undesirable discharge under conditions other than honorable I may be ineligible for many or all benefits as a veteran under both federal and state laws and that I may expect to encounter substantial prejudice in civilian life." [7]

And so he does. An Undesirable Discharge, former California Congressman Clyde Doyle once observed, is "not only a stigma" but "a life sentence unless it is changed." [8] It is a life sentence, one might add, given to men sometimes only 19 or 20 years old. Youths who drop out or are expelled from high school have some chance to return and redeem themselves. Youths who are expelled from the army do not.

Very few discharges are changed after a soldier becomes a veteran. Men are discouraged from appealing because the process usually takes years and requires legal assistance beyond their means. They have been told, moreover, that appeals are usually fruitless, and the records bear this out. During a six-year period from 1966 to 1971 the Army Discharge Review Board upgraded approximately 14 percent of the discharges of those persons who appealed to it.[9] Since at the most only one out of every five veterans who receives a bad discharge ever appeals, those who had their discharges upgraded probably represent no more than 3 percent of the total.

The difficulties in the discharge review system have been nowhere more evident than in the cases involving drug use. In August 1971 the Defense Department announced that since it was no longer imposing Undesirable Discharges solely for use or possession of drugs, men who had previously received Undesirables on those grounds could have them upgraded. Eight months later the policy was expanded to include the review of drug-related discharges issued by courts-martial. The major purpose of these reforms was to enable such men to qualify for treatment in VA drug programs.

There was, however, no assurance that changes would be made in any particular case, nor were their firm rules on which discharges would be upgraded. During the first year of the policy, 1,893 applications were received from men who received Undesirable Discharges for drug use. Only 909 were upgraded. Each military service was apparently free to apply its own criteria in these decisions; at least that is what the statistics suggest. While the Navy upgraded 343 out of 385 discharges, the Army was willing to change only 154 out of 911.[10]

Furthermore, although the military announced in two press releases that it would agree to review drug-related discharges, it never bothered to inform the men themselves. There was never so much as a single letter sent to the veterans informing them that their discharges might now be changed. Some men heard about the new policy through newspapers; many others probably never have. One reason the military may not be eager to inform the veterans is the work load it might impose on the review boards. They creep along at the laziest of paces, usually with a long backlog of cases. Were the new policy on drug-related discharges to be effective, not only would veterans have to be informed of their rights, but the numbers of boards would have to be increased or the work capacity of current boards expanded.

THE IMPASSIVE VA

Contrary to widespread belief, federal law does not bar the Veterans Administration from dispensing benefits to most less than honorably discharged veterans. Were the agency to change its own procedures, new legislation would, in fact, not be necessary to permit VA hospitals to offer drug treatment to men with less than honorable discharges. The VA is also in a position to extend educational

assistance to veterans who are perpetual unemployment statistics. But because of the way the VA has applied the law and the way it interprets its social functions, the agency has not made such assistance available.

According to the law, benefits are available to all veterans who received discharges "under conditions other than dishonorable." Anyone who received an Honorable or General Discharge is unambiguously entitled to benefits. Anyone who received a Dishonorable Discharge is unambiguously excluded from benefits, as is someone issued a Bad Conduct Discharge by general court-martial. Undesirable Discharges and Bad Conduct Discharges issued by special court-martial constitute the "gray area." If a veteran has one of these—and more than six out of every seven Vietnam veterans with bad discharges do—the VA makes an independent determination whether or not it was issued under dishonorable conditions.

The agency has adopted its own rules on this question. A discharge issued mutiny, spying or homosexual acts is automatically considered to be under dishonorable conditions. Mutiny and spying charges appear primarily in war movies, but rarely in real life. Homosexual acts, on the other hand, never occur in war movies but do occur in real life. The categorical position the VA has taken on cases of homosexuality reflects a highly traditional view of moral behavior. Whether it is also constitutionally correct to deny benefits on grounds of extralegal moral attitudes is another question.

In addition to these specific categories of discharges which the VA has determined to be under dishonorable condirions, the agency has adopted two rather broad and subjective criteria in its eligibility decisions. A discharge is considered to have been issued under dishonorable conditions if it stemmed from an offense involving "moral turpitude" or was the result of "persistent and willful misconduct." What constitutes "moral turpitude" or "persistent and willful misconduct"? Whatever the person ruling on the request for benefits decides. No one that we interviewed in the VA, either in the national or regional offices, could offer any definition. The determination is made on a case-by-case basis without the assistance of any guidelines. An older VA employee in Montgomery, Alabama, may consider smoking marijuana an offense involving moral turpitude, while his younger counterpart in San Francisco would merely be amused.

Indeed, the criteria may be applied differently within the same office. The only guidelines would appear to be an unwritten presumption that the services only impose bad discharges for acts of moral turpitude or persistent and willful misconduct, because the VA hardly ever comes to any other conclusion. A recent study by the agency indicated that 93 percent of the veterans with bad discharges who apply for educational benefits are denied them.[11]

A veteran who seeks benefits from the VA applies to his local office where he will be asked for his discharges papers. If the applicant has a Bad Conduct or Undesirable Discharge, the VA employee will advise him that his application must be sent to the regional office for an eligibility determination. At the regional office for an eligibility determination. At the regional level an "adjudicator" will examine the applicant's entire file supplied by the military service involved and then rule whether the veteran engaged in moral turpitude or persistent and willful misconduct. The adjudicator will base his decree not only on information the military has provided, but also upon any statements submitted by the veteran. Rarely, however, will statements be submitted since the applicant is not necessarily notified that he can do so. The veteran will probably also be unaware of all the military reports the adjudicator has before him. Although the applicant technically has a right to see his file, he is never advised that he has that right, nor are copies of his file made available to him if he wishes to see it. He must go to the regional office during a weekday and look at the file there.

If the adjudicator determines that the individual is not entitled to benefits, that determination must be approved by an "authorizer." The applicant may then file a "notice of disagreement," in which event the case will be reviewed again, this time by a senior claims examiner and an authorizer. If they agree with the decision of their colleagues, the applicant will again be notified that this request for benefits has been denied; this time, however, he will receive a statement explaining why they have been denied. He will also be advised of his right to appeal, and finally—after two determinations have been made to deny him benefits—he will be advised that he may submit evidence on his own behalf.

His appeal will be heard by the board of veterans' appeals, which has never had any Vietnam veterans among its members. The board is not limited to reviewing the adjudicator's decision, but can completely reexamine the entire record. However, it also has no guidelines for deciding what is moral turpitude or persistent and willful misconduct.

The veteran has a right to be represented before the board by a lawyer, but it is doubtful that he will be unless a beneficent friend or someone in his family went to law school. Lawyers are limited by statute to receiving ten dollars for all services they render to a veteran applying for VA benefits. The agency argues that the lawyer's fees would come from the benefits awarded and consequently limit what the veteran receives. When it is suggested that some benefits may be better than none at all, they note that the various veterans' organizations provide representation. This is true, but the American Legion and VFW have not exactly been in the vanguard of organizations defending such causes as the rights of homosexuals, political dissenters and drug users. Yet if veterans with bad discharges cannot get help from one of the associations, they are pretty much out of luck altogether. Furthermore, the long participation of the associations in the appeal board procedures has made them part of the VA inner family and made it unlikely they will seize upon unpopular cases. VA officials note with pride that 25 representatives of veterans' organizations have rent-free offices in VA headquarters on Vermont Avenue in Washington, D.C. Their role can probably be better understood in terms of the kinship networks of traditional societies than in terms of the adversary tradition of Anglo-American law.

To ensure that the VA family remains free of outside scrutiny or interference, statutes prohibit appeal to the courts of any decision by the VA granting or denying benefits. Benefits have the legal status of gratuities. The VA can no more be legally compelled to bestow gifts on veterans than children can be compelled to give presents on Mother's Day.

All this contributes to a degree of institutional privacy that one normally only finds in expensive private men's clubs. Both the adjudicator and the board of appeals may issue their decisions without having their notions of morality examined in a public inquiry. The veterans' rights may be unprotected, but the prejudices of agency officials are perfectly secure.

Ordinarily the VA keeps no statistical records on benefit applications from veterans with Undesirable and Bad Conduct Discharges. A study of a five-month period in 1972, however, noted that only 1,305 applications for educational benefits were received from men with bad discharges. Of these, 91 were approved. During this same period more than 4,000 veterans with bad discharges applied for unemployment compensation. (Although the benefits are dispensed by the Labor Department, eligibility decisions are made by the VA.) Of the 4,000 men who applied, 3,400 were found ineligible. Ninety-seven of the cases involved veterans with drug-related discharges; six of these were approved. As one VA official remarked after seeing these statistics, Undesirable and Bad Conduct Discharges are effectively the same as a Dishonorable Discharge in terms of eligibility for veterans' benefits.

There is some question whether this practice represents the intent of Congress. A veteran, as defined in the law, is a person discharged "under conditions other than dishonorable." Strictly speaking, that means all men who served in the armed forces except those who received Dishonorable Discharges. The VA has taken it upon itself to interpret the definition as excluding nearly all of the men who received Bad Conduct and Undesirable Discharges.

Given the impassive attitude of the VA, very few veterans with bad discharges ever seek to establish eligibility for benefits. The board of veterans appeals received fewer than 100 appeals during 1972 involving the character of discharge. One possible explanation for this figure might be that adjudicators were granting eligibility, but as we have seen, favorable decisions at that level are extremely rare.

The infrequency with which the VA grants benefits to less than honorably discharged veterans has left the impression that it has no power to do so—an impression which further discourages men from making appeals. In fact, so widespread is the opinion that the VA has no discretion in this area that several military lawyers contacted answered "absolutely not" when asked whether veterans with Undesirable and Bad Conduct Discharges might be entitled to VA benefits. In that light it is hardly surprising why so few veterans ever appeal to the VA.

SIMPLIFICATION, REVIEW AND REFORM

Both the military and the VA have vigorously resisted any efforts to change their administrative procedures for granting and evaluating discharges. The military insists the administrative discharge process must remain as it is to maintain discipline and efficiency, while the VA says its administrative procedures protect veterans more effectively than formal judicial processes. The first of these

claims is a canard; military discipline can be maintained under a changed administrative discharge process. The VA's argument is belied by its own data that indicate the vast majority of veterans with bad discharges are denied benefits on appeal. But whatever the rationale offered separately by each agency, the combined effect of the two administrative systems is to deny entitlement to benefits without basic constitutional protections along the way.

The heart of the legal problem is the Undesirable Discharge. To guarantee veterans' their fundamental rights, a critical step would be to deny administrative boards the alternative of imposing Undesirable Discharges. If the military wishes to dismiss a man under "less than honorable conditions," it should have to conduct a court-martial to prove its case. If it does not conduct a court-martial, it should not have the power to impose a discharge that will exclude a veteran from receiving benefits he is entitled to by law. In other words, administrative boards would be restricted to Honorable and General Discharges. The rule on eligibility for benefits would then be unequivocal, leaving the VA no room for discretion and eliminating its entire procedure for evaluating discharges in the "gray area." Any veteran who received an administrative discharge—including one who received an Undesirable Discharge in the past—should be eligible for benefits. Any veteran who received a discharge under dishonorable conditions after court-martial should not.

In addition to this change, the military services should facilitate the process for discharge review. This particularly applies to those veterans who were dismissed for drug-related causes prior to August 1971, when Defense Department policy in that area changed. If someone who received a bad discharge under the old policy would have received a good discharge under the new policy, reclassification should be automatic. Others whose cases may be less clear should be notified of the opportunity for review. To meet the increased work load these reviews will create, the Defense Department should establish additional review boards as needed, possibly on a regional basis so that they are more accessible to veterans in areas far from Washington.

To raise the issue of discharge review is, of course, to enter upon a much larger matter that relates to the Vietnam War and the whole question of amnesty. Emotions on this subject are still intense, and probably only in a more distant and quiet time will the nation find that spirit of charity which characterized Lincoln's attitudes towards the South in a far more divided era than our own. We will have to ask ourselves then whether a reasonable man might not have been legitimately disaffected in the army during the Vietnam War and led to act in ways that cost him a less than honorable discharge. And even if we reject that possibility, we will still have to ask whether it is right to mark a man for life for crimes of youthful alienation or merely youthful exuberance. But these, of course, are questions for the distant future. It took us a decade to slip into Vietnam. Surely it will take us at least a decade to slip out.

JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA,
Washington, D.C., March 15, 1974.

Hon. ROBERT W. KASTENMEIER,
House of Representatives,
Rayburn Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Submitted herewith, for insertion in the record of the hearings conducted by you on Amnesty proposals, is a policy statement adopted by the Jewish War Veterans of the United States of America by the Jewish War Veterans of the United States of America last August at our 78th Annual National Convention.

The JWV position on Amnesty is the product of consideration, discussion and debate in our resolutions committees and national conventions during the past three years. It represents a desire to further national consideration of a problem that troubles so many Americans. We believe that a Commission for National Reconciliation representing the spectrum of opinion on the subject would provide a practical instrument for achieving the necessary consensus to obtain a significant measure of national unity on so divisive an issue.

Thank you for your consideration.

Respectfully,

FELIX M. PUTTERMAN.

Enclosure.

National Commission for Reconciliation

Not since the Civil War, over a century ago, has this nation suffered such internal turmoil over the consequences of participation in a military conflict. The fragile peace in Vietnam recently achieved has awakened hopes for international reconciliation. This blessed achievement presents now a significant opportunity to reflect upon the domestic turmoil which emerged in the past decade as a result of the United States involvement in Vietnam as well as to enlist a broad spectrum of American leadership with the assigned mission to evolve new pathways for national reconciliation.

Who would dispute that the cancer of segregation and racism which permeated our national life this past century could have been mitigated, if not averted, had Presidential leadership after the Civil War sought to heal the wounds that divided this nation? History has recorded the tragic evolution of catastrophic events since 1865 which have undermined American unity.

The residue of unresolved public issues from the Vietnam conflict are patently manifest to most Americans. There is an obvious need to develop effective programs for the rehabilitation and reintegration of Vietnam veterans in peaceful domestic life. There is the challenge to reestablish links and to treat with moral justice those thousands of young men who sought to avoid their full military obligations. The JWV proposes they be treated with fairness but is opposed to a policy of general Amnesty. There is the crying problem of reaching a growing generation of cynical and disenchanted young people who seem to lack faith in the survival of a democratic America.

Only dynamic leadership from the President of the United States who represents the collective judgment of the electorate can unite the divergent forces in this country to focus attention on these crucial issues. Through the appointment of a National Commission for Reconcillation, representative of the broadest spectrum of the American community, the process will be launched to heal the wounds of the Vietnam War and to reach out for national purpose and unity.

Amnesty Resolution of Plymouth Congressional Church, Minneapolis, Minn.

Whereas the United States has granted amnesty after every war in some form or degree, as well as after several insurrections, as have other nations from time immemorial; and

Whereas amnesty is a legal act, the law's way of forgetting past differences and political offenses so that the body politic may be given the chance to heal, and thereby strengthen our country; and

Whereas amnesty is not a rendering of moral judgment and, therefore, may for good and proper reasons, be supported by citizens whether or not they agree with those who would receive amnesty; and

Whereas citizens have engaged in acts of civil disobedience because of their fundamental disagreement with our government's policy on Indochina, their opposition to the draft and other military laws number in the hundreds of thousands; and

Whereas this nation has been built on the fundamental principle of diversity of opinion and respect for conscience, and dare not abandon it: Therefore be it

Resolved, That we, the undersigned, urge the granting of a general and unconditional amnesty by the Congress of the United States, and the President to all draft refusers, deserters, persons convicted by courts-martial for military offenses not punishable under civilian law, veterans with less than honorable discharges, and civilian protesters and resisters to the war, thus allowing full restoration of all civil, political, property and other rights.

Statement on Amnesty of Stuart Innerst

My name is Stuart Innerst. I reside at 5840 Camino de la Costa, La Jolla, California. I am a member of the Society of Friends (Quakers) and for many years have been associated with the Friends Committee on National Legislation, the American Friends Service Committee and other organizations in attempting to end the war system and build a world founded on law and order.

I am testifying on my own behalf as a concerned citizen, but I believe that what I have to say is shared by many Americans who now feel that the public was deceived and misled (as the Pentagon Papers amply show) into supporting a war that this country should never have fought, and that the young men who resisted the war should not now be punished for having done what the nation should have done. They refused to become involved in a civil war 10,000 miles from our shores with a little nation that posed no threat to the United States and hadn't attacked it. Therefore, they deserve to be granted amnesty.

Amnesty means "a forgetting, a deliberate overlooking." It is what President Nixon did when he went to Peking and Moscow in 1972. No one had condemned the actions of these two nations more vehemently than he, but he made an about-face and granted them amnesty. He did "a forgetting" of their sins and drank toasts to their leaders. Later he granted amnesty to Hanoi and offered to rebuild its war-ravaged country. For this change of attitude toward former enemies the President is to be highly commended.

If President Nixon can suddenly overlook crimes he held against the Communists for years, why the unforgiving and unforgetting attitude toward young Americans whose only "crime" is that they refused to fight in what they and many other Americans felt was a senseless war? When the President was asked at a press conference on January 31, 1973, whether he had anything in mind to help heal the wounds of the war, particularly regarding amnesty, he replied: "Now amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid the price. Those who deserted must pay the price. The price is a criminal penalty for disobeying the laws of the United States."

The President's position of demanding punishment is not only contrary to religious principles in general, and those of Friends in particular, but also is a far cry from the Nuremberg trials in which this country took the leadership in putting to death men it condemned as "war criminals." What was their crime? Precisely what the draft evaders and deserters refused to do. If it was criminal then for Germans to obey government orders rather than conscience, why is it now criminal for Americans to have done the opposite?

The young men the President would now punish are not an alien breed. They are America's children, flesh of our flesh and blood of our blood. Most of them were not unpatriotic in rejecting the draft or deserting from the armed forces. They distinguished between love of country and obedience to a government engaged in waging a war without a cause worthy of their devotion.

Something fine that home, school and church had put within them revolted against the lopsided conflict in Indochina. The wealthiest and mightiest nation on earth was unleashing the most ghastly weapons and the greatest fire power in the history of warfare against a small impoverished people who wanted to be free from colonial rule and western interference.

If amnesty is to be given fair consideration, it must be viewed against the background of the government's Vietnam policy. What the government did was in a large measure responsible for what the war-resisters did. It was a war that "nobody wanted." The war-resisters who had been expected to fight it, acted on their convictions and refused.

The nation embarked on a disastrous course in East Asia, as Walter Lippmann early pointed out, because it was "untrue to itself." It repudiated the principles of the Declaration of Independence by supporting the colonial war of the French aimed at denying Indochina its independence. It then violated its pledge to support the Geneva Accords by backing Ngo Dinh Diem; who disregarded the Accords; spurned the United Nations Charter by intervening unilaterally in Vietnam's civil war; and violated the Constitution by waging the longest war in our history without declaring war.

While the government itself was acting in what can accurately be called a lawless manner, it was demanding that its young men be law-abiding and risk their lives fighting an illegal war. The government was "untrue to itself," then asked young men to raise no questions about conformity to its far from exemplary conduct. That millions of Americans protested their government's systematic destruction of the land, the people and the culture of Indochina is in our finest tradition.

That hundreds of thousands of young Americans had no stomach for such a war is to their everlasting credit. To punish them for their resistence would be a further betrayal of the highest values in America's political, religious and moral

heritage. Instead of punishment, what is needed now is a new beginning for both the nation and the war resisters. That is what amnesty means.

It is argued that granting amnesty will weaken the military's future defense capabilities. This is doubtful. The future will take care of itself if the government so conducts itself as to command respect and loyalty.

But is amnesty fair, someone asks, to the men who fought and "paid the price"? This implies that the men who chose exile, deserted or went underground have not paid a price. Every counsellor of such men knows something of the mental agony they experienced. Who can measure the price of loneliness, alienation from family and friends, harassment, deprivation, insecurity, uncertainty regarding the future, the feeling of being scorned by the crowd and always pursued by the FBI? The truth is that both those who fought and those who refused to fight are victims of this war, and that the nation needs to act with compassion toward all of the victims of Vietnam.

Other arguments in favor of amnesty include the American tradition of loyalty to "a moral power higher than the state" and the wrongness of forcing 18-year-olds to choose between limited options of fighting in an unjust, futile war, or going to jail, into exile or underground.

The most compelling reason for amnesty, however, is that the country needs it for its own well-being. Amnesty would help to restore to American youth the confidence they have lost in their government. And it would bring back from exile tens of thousands of young people who can make valuable contributions to this country.

In his testimony at the Senate hearings on amnesty, Dr. Henry Steele Commager said: "May we not say that the majority of those who deserted or went underground merely took 'prematurely' the position which the majority of Americans now take. . . . May not the deserters and evaders claim that their error is to have been ahead of public opinion and of government policy, and that it should be easy to forgive the error?" Many of these young people—and many older ones too—understandably feel, not they but the government needs forgiveness.

The sum of the matter is this: The war in Vietnam was the outgrowth of a tragic mistake this country made at the end of World War II, when it took upon itself the duties of global policeman. Blinded by self-righteousness and misled by power it assumed that it had the answer to the world's problems and that it was wise enough and good enough to shape the destiny of nations.

This country's invasion of Cuba and the Dominican Republic, and the meddling in Chile's politics in recent years are but several of the many chapters in the sordid story this nation has written through the cloak and dagger operation of its well-financed "invisible government", the CIA. If we are to be honest with ourselves, we must admit that it is the story of a government that increasingly reveals itself to be morally bankrupt. Its alliance with petty, corrupt dictators throughout the world is a complete betrayal of the principles on which the nation was founded and to which it continues to give lip service.

If we are to observe in a meaningful manner the birth of the nation in 1976, nothing is more needed than to repent of the imperialistic follies of recent decades, to atone as far as possible for having waged at a terrible cost one of the cruelest and most unjust wars of history, and to dedicate ourselves anew, as a nation, to the values embodied in the image of ourselves at our best.

That is why amnesty becomes an issue of paramount importance. It would recognize that "the nation owes a debt to the consciences of its citizens," as John Bennett points out, and that the men who conscientiously resisted the war have an important moral and spiritual contribution to make to American society. Amnesty would reaffirm that this indeed is America, and that here we do not emulate the "police state" in demanding universal conformity under pain of punishment.

Amnesty has been written into the Constitution and has been granted at various times to those who not only opposed government policy, but actually fought against the government. Lingering hate and vindictiveness can serve no creative purpose. The nation needs the chastening and cleansing experience that will spring from practicing Lincoln's policy from an earlier but in many respects quite similar day in our history: "With malice toward none, and charity for all."

STATEMENT OF EDWARD J. DAMATO—NATIONAL COORDINATOR, VIETNAM VETERANS AGAINST THE WAR/WINTER SOLDIER ORGANIZATION

My name is Ed Damato and I am a National Coordinator of Vietnam Veterans Against the War/Winter Soldier Organization. As you may know, our organization was formed by people who were veterans of this government's illegal war of aggression against the peoples of Indochina. As such, we came to learn first hand the monstrous crime the US government was perpetrating there. We came to understand that it was not only our moral but our legal responsibility as well, to resist that war. An understanding that was based on the moral precepts of our society as well as the Nuremberg principles, the Geneva conventions and the US Constitution. Because we see resistance to the illegal was still being waged in Indochina by the US Government as our obligation and our duty, because we continue to urge others to do likewise, we are speaking to you today on the subject of universal and unconditional amnesty.

The VVAW/WSO feels that amnesty for resistance to this war *must* be won by the American people. By amnesty, we mean no such thing as pardon or forgiveness. We firmly believe that those who resisted the war committed no crime. Precisely put, amnesty rather signifies that resistance to the war was legitimate, that it was legal and in fact demanded by the situation. Our nation must come to terms with the fact that the government's war in Indochina was, and is, totally wrong. If not, the lesson of what the war in Indochina means will be lost and we will inevitably find ourselves entangled in a similar war in the not-too-distant future. Achieving universal and unconditional amnesty is the best way we know of driving that point home, as well as ending the incredibly oppressive conditions affecting the hundreds of thousands of US citizens in need of an amnesty.

Attached to this statement is VVAW/WSO's formal position paper on the amnesty issue. It elaborates the subject with much greater clarity than I possibly can in this short period of time. It speaks to our demand for an unconditional amnesty; one that would entail no alternative service or other punitive measures, or case-by-case judgment. It also speaks to our demand for universal amnesty; one that would encompass all categories of resistance to the war and the racism and oppression of military life that was part and parcel of it. These categories are: 1) the military resisters, (so called deserters), and draft resisters in exile or underground in the US, 2) all people who are or have been, in civilian and military prisons or those who are sought for prosecution because of their opposition to the war, including a clearing of their records, and, 3) finally the more than half million veternas with less-than-honorable discharges.

It is to this final category of resisters in need of amnesty that I would like to now address myself. While VVAW/WSO is clearly seeking universal and unconditional amnesty for all the various categories of war resisters, special emphasis must be placed on the plight of the more than one half million veterans with less-than-honorable discharges. Unfortunately badly discharged veterans, unquestionably the largest single category of war resisters, are rarely if ever viewed as being part of those in need of amnesty. Part of this is the result of the national media—when discussing amnesty it has consistently chosen to focus on the highly visible exile community in Canada and Europe, to the total exclusion of all other categories of resisters. Part of this is the result of the government's own manipulation of the issue—when making statements on amnesty, government officials always seem to steer them away from the subject of badly discharged veterans, away from an issue of extensive and direct importance throughout communities here in the US, to the distant safety of Canada or Sweden. The fact of the matter is that all too few people in this country are even aware that veterans with less-than-honorable discharges are just as much in need of an amnesty as the exiles in Canada and Europe.

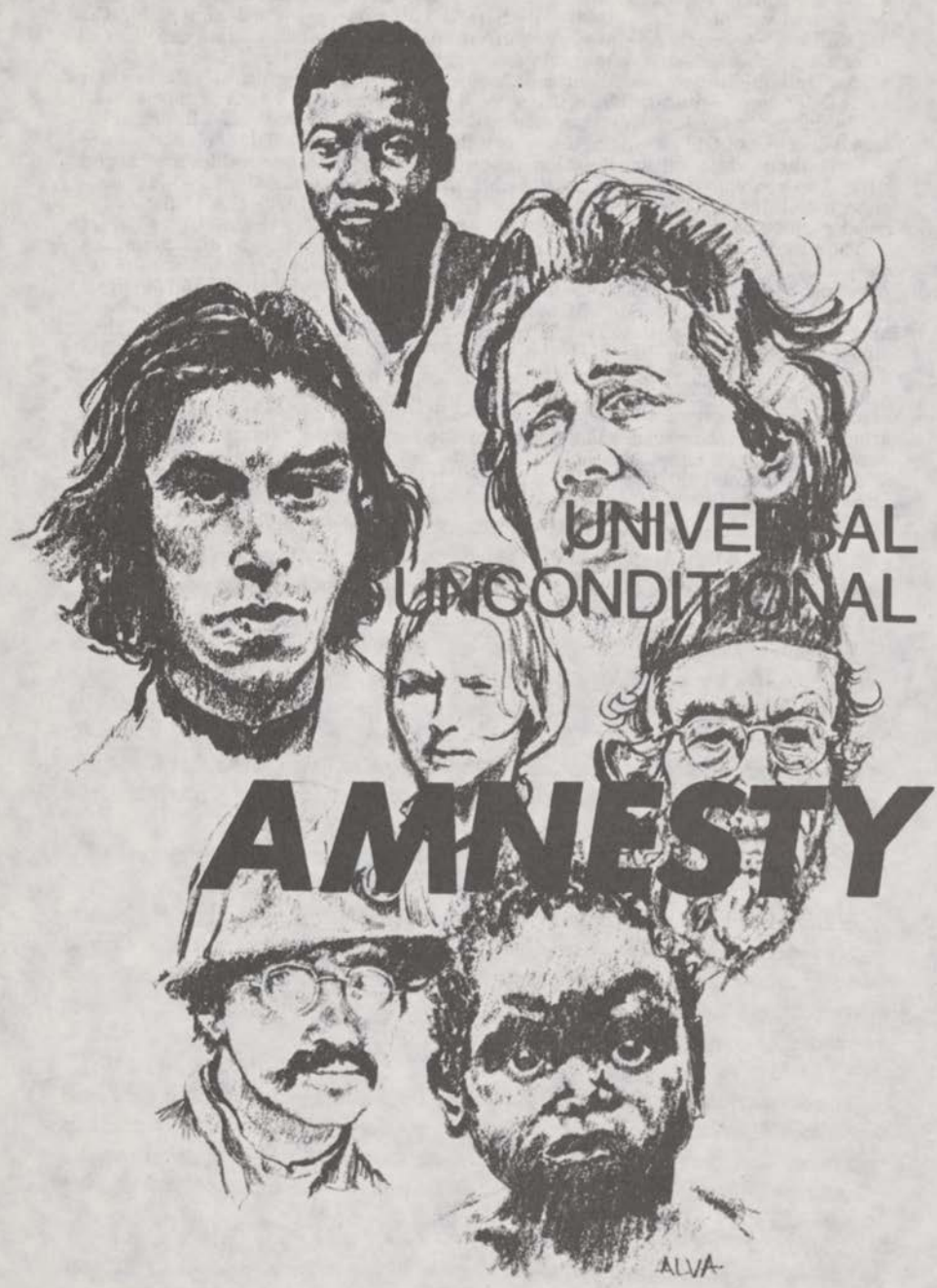
The military system of discharges is something most people, including GIs and veterans, poorly understand. A more unjust, racist institution would be hard to find. There are five types of discharges issued by the military: honorable, general, undesirable, bad conduct, and dishonorable discharges. Only two of these, bad conduct and dishonorable discharges, are given as a result of a court-martial. The rest are given by administrative procedure. Of the approximately one half million Vietnam era veterans with less-than-honorable discharges all but 33,000 were given administratively, with the individual receiving the discharge not being able to cross-examine witnesses, challenge affiidavits or appeal decisions in military courts.

Whether punitive or administrative, all less-than-honorable discharges play havoc with people's lives. Badly discharged veterans are rarely eligible for the GI Bill or VA benefits. Many veterans wounded in combat in Indochina, who later received a less-than-honorable discharge from the military, now find themselves ineligible for any medical care for problems stemming directly from their wounds. A more monstrous injustice is hard to imagine. Needless to say, all badly discharged veterans have a miserable time finding decent jobs. Representative Seiberling of Ohio conducted a survey that found over one half of all companies polled admitted job discrimination in hiring of less-than-honorably discharged vets. The problem is growing. Last year alone, the army issued over 50,000 less-than-honorable discharges, or 16.4% of all discharges in 1973! (DOD figure for fiscal year 1973)

The problem facing these veterans is part of the disaster caused the American people by the US government's war in Indochina. This war has caused, to date, over six million Indochinese casualties and left the US with over 55,000 dead and 300,000 casualties. Bad discharges resulted from the resistance to the war and the racism and oppression of the military, (in 1972 the DOD "noted" that Black GIs were twice as likely as White GIs to receive less-than-honorable discharges.)

Because the war was wrong, resistance was right. Just as we are now raising a demand for amnesty for those who resisted the war by going into exile, underground or prison, so we are raising the same demand for GIs who resisted the war and the military. These are the half million Vietnam era veterans who received less-than-honorable discharges. This amnesty must be universal and unconditional.

Thank you.


UNIVERSAL
UNCONDITIONAL
AMNESTY
ALVA

AMNESTY STATEMENT OF DELEGATES OF EXILES, ACTIVE-DUTY GI's, AND VETERANS PARIS, FEBRUARY 19-21, 1973

At a time when we are told the war is coming to an end, American troops, material and advisors still remain in Indochina and U.S. intervention in the affairs of the Indochinese peoples continues. We, war resisters in exile, active-duty GIs, and veterans demand that the U.S. government withdraw all its troops from Indochina and strictly adhere to the January 27 agreement to end the war.

The American governments's illegal intervention in Southeast Asia has been opposed by a majority of the American People. Hundreds of thousands of men and women in the U.S. have suffered a loss of civil rights, liberty, and jobs because they have been in opposition to the war or subjected to the racism and oppression of the American military and draft systems. Contrary to Nixon's deliberate distortion about the "few hundred" anti-war exiles, there are in fact 60,000 to 100,000 of them. But the majority of war resisters are inside the U.S. where an estimated 200,000 live underground. Thousands are behind bars; many have court records; and over 500,000 veterans have less than honorable discharges.

We demand universal, unconditional amnesty (with no alternative service or other punitive measures, or case-by-case judment) for:

1. All military resisters (so called "deserters") and draft resisters in exile or underground in the U.S.;
2. All people who are, or have been, in civilian and military prisons, or those who are sought for prosecution because of their opposition to the war – this includes a clearing of their records.
3. The more than half million veterans with less than honorable discharges.

War resisters are not criminals; the real criminals are the American Government leaders who have violated the U.S. Constitution and International Law in waging this war. It is these people who are responsible for the death and destruction in Indochina and for the hundreds of thousands of Americans killed or wounded in combat.

The perpetration of this illegal war by the United States has violated the honor that should surround one's service to one's country. Only an amnesty which is universal and unconditional will truly mark an end to the U.S. government's disastrous policy in Indochina and at the same time serve to prevent all such future wars.

(The following is a more detailed explanation of the national position of VVAW-WSO on amnesty. This paper was written by representatives of RITA-ACT, the National Lawyer's Guild, Pacific Counseling Service, Campaign for Amnesty and Vietnam Veterans Against the War-Winter Soldier Organization. It was adopted as the official position of VVAW-WSO at the National Steering Committee Meeting held in Placitas, New Mexico from April 19-23).

Vietnam Veterans Against the War/Winter Soldier Organization

Position Paper on Amnesty

Table of Contents

Amesty Statement of Delegates of Exiles, Active-Duty G.I.s and Veterans. . . . . p. i

Background. . . . . p. 2
Types of Resistance . . . . . p. 2
Refused Registration or Induction . . . . . p. 2
Living Within the U.S. . . . . p. 2
Living as Exiles. . . . . p. 3
Military Resisters . . . . . p. 3
Military Resisters After Vietnam Duty. . . . . p. 4
Resistance Discharges . . . . . p. 4
Civilian Protesters . . . . . p. 5

Amnesty Sentiment . . . . . p. 5
Government's Anti-Amnesty Position . . . . . p. 6
Economics. . . . . p. 6

Our Strategy . . . . . p. 7
Definitions . . . . . p. 7
Case-by-Case Reviews. . . . . p. 7
Discharge Up-Grading . . . . . p. 7

Unity in Demand for Amnesty. . . . . p. 8
Amnesty as Part of the Anti-war Movement. . . . . p. 9
Amnesty as Part of the Anti-imperialist Movement . . . . . p. 9
Amnesty and the Volunteer Army . . . . . p. 10
Domestic Counter-insurgency. . . . . p. 10
Amnesty and Domestic Organizing. . . . . p. 11

Concluding Thoughts . . . . . p. 12

BACKGROUND

There are several basic starting points which are relevant to any discussion of the amnesty issue. First, U.S. intervention in Indochina has been by Presidential decree only, without the declaration of war by Congress. Therefore, it has always been an illegal war. In addition to illegal entry, the U.S. has violated the Geneva Accords of 1954 and 1962, the International Rules of War and the Nuremberg principles that it stated in the Nazi trials after World War II. The latter held that an individual is personally responsible for his or her own acts, no matter what orders may have been given by a higher civilian or military authority. Resistance to fighting in that war, therefore, came from several conclusions about both the spirit and letter of domestic and international law. Additionally, there was the widespread feeling that the U.S., as a superpower, was interfering in the internal affairs of other countries for reasons that had nothing to do with national security or defense.

TYPES OF RESISTANCE–Hundreds of thousands of American men legally resisted the draft. They found ways to prevent their personal involvement in the Vietnam war. These ways include: CO status, staying in school, getting jobs which carried draft exemptions, finding medical excuses (often provided by anti-war and sympathetic doctors), etc. The common basis for all these types of actions was the financial ability and availability of information to essentially a middle-class group. These people are usually not counted among figures of resisters because their forms of resistance carried no penalty. But in fact, they form an enormous base of people who acted as they did because of anti-war sentiment; and they ought to realize that their actions were responsible for both the increased anti-war sentiment in the population at large, and also for the necessity of other young men taking their place in the draft. This last fact had particularly high consequences for the working class, poor and third world segment of society. We should look to this group of successful resisters for help in organizing local amnesty campaigns.

REFUSED REGISTRATION OR INDUCTION–The majority of those men who refused to register or who refused induction are still vulnerable to prosecution. It was these acts of resistance which focused public attention on anti-war resistance to the draft. Resistance has also resulted in a tremendous court backlog of cases. The courts are now moving to prosecute these cases after a slowdown of several years. It is clearly the hope of the Nixon administration that the ceasefire agreement has taken public attention away from these cases.

LIVING WITHIN THE U.S.–The government is currently paying particular attention to those resisters who are politically conscious and active. While we may predict that many resisters will be dealt with leniently, we also think that those who are active will be dealt with in an extremely harsh manner (i.e. members of groups like the Puerto Rican Revolutionary Workers Organization, Rising Up Angry, etc.) Public silence around these trials will result in the division of visible politically conscious people from others, and we should not allow that division to

31-658 O - 74 - 52

take place. For the most part, we can assume that the men involved can be organized around their own defense.

LIVING AS EXILES–There are presently about 200,000 men in America who are either fugitives from the draft or military, awaiting trial, or in prison. Canadian exiles number upwards of 60,000, including both the resisters and their families. There are also several thousand in other countries. These men have been forced to completely change their lives. They have left friends, family, and country to avoid compromising their political and moral beliefs. An economic analysis of this group would show that, for most, legal forms of resistance were not feasible. Resisters who were able to plan their exile in advance were better able to take advantage of Canadian immigration requirements; many have made new lives and have applied for Landed Immigrant Status. Some of the draft resisters and almost all deserters do not have either the skills or the financial backing to attain such status. It is this latter group that Canada has recently begun to move against and will eventually deport. They are the most vulnerable of the exiles.

MILITARY RESISTERS–Men who left the military after induction are that group for whom alternatives were very few. They largely come from poor economic backgrounds. Many did not have information about the various forms of legal resistance which were available. They did not have information about the realities of the war itself and became aware of its nature only after they were in the military. Many of them believed that the war was necessary in order to protect their country, and many were persuaded that it was their patriotic duty to defend us against communism.

This group has always been the "cannon fodder" of any war. They have traditionally regarded the military as a way out of their economic situation and as a means to helping their families. Not only did this group always have difficulty in obtaining good jobs, but over a period of time they have been forced to be primarily concerned with their own survival. Entering the military, either by draft or by enlistment, was always seen as one more way of survival among a dismal set of choices. Of this group, third world young men in particular believed military propaganda about opportunities; but by virtue of their duty assignments, they were relegated to that group which would be the most likely to be killed or wounded in action.

Figures about the size of this group are difficult to ascertain. The military automatically classifies all AWOLs as deserters after 30 days. However, we can get some idea of the potential size of this group. In 1966, there were about 16,000 AWOLs and deserters from the Army alone. In 1970, this figure increased to over 65,000 AWOLs and deserters from the Army. Up until the last few years, the majority of exiles in Canada were draft resisters. However, during the last two years, 90 percent of the resisters who went to Canada were military resisters. The majority of the exiles in Europe have always been military resisters.

MILITARY RESISTERS AFTER VIETNAM DUTY–There are a sizeable number of deserters and AWOLs who left the military after their period of duty in Vietnam. This group reacted in a particularly strong way to their experiences in Vietnam. They came to hate and distrust the U.S. military machine, based on their only too acute perceptions of what the Vietnam war was all about. With virtually no advance preparation, but understanding that they were being forced to take tremendous risks, this group deserted wherever they happened to be – in Western Europe, sometimes in Canada, or in the U.S. itself.

RESISTANCE DISCHARGES–Since 1963, 500,000 GIs have received discharges under less than honorable conditions. Thousands more are currently in stockades and brigs as a result of their resistance to the war while inside the military machine. Many of these acts took the form of direct actions against the racism and oppression of the military.

The general breakdown of military morale, discipline, and credibility was the result of a growing awareness on the part of GIs with regard to the responsibility of the military for the war and the manner in which it was waged. It was also a reflection of resistance to the oppression of the military, as well as a sign of the growing sense of unity with other young people whose values, life-styles and politics were in direct contradiction to those of the people in authority. The reaction of those soldier who had fought in Vietnam was extremely bitter, and although most of them did not leave the military, they did engage in acts of protest, of outrage, and of frustration. For third world GIs, the racism exhibited by the officers and the military machine itself was even less tolerable after service in Vietnam than before. There was also a growing sense of unity with other resistance movements, i.e. the black movement at home. A black draft avoider in Canada voiced these sentiments: "I'm not a draft evader, I'm a runaway slave. I left because I was not going to fight white America's war." In 1972, black soldiers received 20.7 percent of all Bad Conduct Discharges and 32.6 percent of all Dishonorable Discharges. This is an example of the disproportional numbers of less than honorable discharges given to third world people.

The attempts of the military to stem this wave of protest and rebellion caused even more problems. Discipline became harsher and the general climate of repression became stronger. These conditions produced even more individual acts of protest against the military. We should be prepared to understand and analyze these unconscious acts of resistance as attacks on a system that was both the target of anti-war sentiment and the oppressive machinery that had helped to create the problem.

This group of men came out of the military with less than honorable discharges and often with criminal records. They do not receive veterans' benefits, have enormous difficulty in getting a job or education, and have largely been forgotten because they are easy to ignore. Any campaign for amnesty must, therefore, include a demand to upgrade these discharges and clear these records, along with amnesty for civilian and military resisters.

CIVILIAN PROTESTERS–By the government's creation of an illegal war and a draft which was then also illegal, and by virtue of a monopoly of channels of information about the war and protest to this war, the state also created the need for "illegal" acts of protest which could break through that monopoly. Members of the U.S. military were forced to break military law in order to protest the war, and civilian young men who did not have legal means of resistance open to them were forced to break civilian laws in order not to participate in that war. Also, there is a group of civilians who engaged in anti-war protests of differing kinds for purpose of gaining public attention and focusing it upon the nature of U.S. involvement in Vietnam. While their military counterparts serve time in brigs and stockades, the civilian men and women are serving time in prisons and jails. Amnesty should include organizing around all those who were forced to break the government's laws in order to resist and protest U.S. actions in Indochina. Just as we are calling for the clearing of criminal records for those who resisted within the military, so we also include the sealing of criminal records, as well as the dropping of charges, for civilians.

AMNESTY SENTIMENT

A Gallup poll taken in February, 1973, on the subject of attitudes toward draft avoiders (no figures are available about attitudes toward amnesty for military resisters) shows that twenty-nine percent of the population already favors unconditional amnesty. An additional ten percent feel that non-military service should be required, and another eighteen percent feel that a choice of either military or non-military service must be required. Eighteen percent more feel that military service must be required. Thus, seventy-five percent of those surveyed are sympathetic to some form of amnesty, conditional or unconditional, for draft avoiders. We feel that these people are educatable to a position of complete and unconditional amnesty for all war resisters and protesters. Particularly when considering all forms of resistance together, we feel that people can come to support the upgrading of discharges as well.

Our analysis of feelings about amnesty on the part of the general population is partially based on the Gallup Poll note that four times as many men as women think that draft avoiders should be given jail sentences (10 percent). Mrs. Patricia Simon, the mother of a son killed in Vietnam and a supporter of unconditional amnesty for all military and civilian resisters noted: "I think that men like Nixon are more threatened than women by the idea of amnesty. For them, masculinity is still identified with force and violence. It's an ancient definition, but it still applies." We think that Mrs. Simon's statement explains the Gallup Poll figures and concludes that women of all classes are apt to be more sympathetic than men to the position of amnesty. However, this should not be seen as a strategy for organizing which would stress classless appeals to a maternal sensitivity. We agree that there is a dominant male stereotype in America which works against a position of support for amnesty. The realization that all women are less affected by a possibly destructive "MALE" method of thinking neither substitutes for, nor contradicts, the strategy of organizing among those people who are most directly affected by the issue because of their economic and social position in society.

GOVERNMENT'S ANTI-AMNESTY POSITION–It is possible to reach several conclusions about current administration feelings on amnesty. Historically, there is no precedent in America for such a demand. It is true that Confederate soldiers did receive amnesty, but it was a political solution to the problem of reuniting the country after the Civil War. It is important to note that Union soldiers were being prosecuted for desertion up to ten years after the war ended. In addition to the lack of precedent, it is more important to realize that the Nixon administration faces, and is highly conscious of, a growing lack of credibility. Such thinking stems directly from their analysis of what support for the government means; if amnesty is granted, then the government might be seen as admitting that the war was wrong and the resistance was legitimate. The government has expended Indochinese and American lives and resources in order to prove that the war was right. There are no signs of change in that position.

A second way of analyzing government sentiment on amnesty is to look at the moral crusade that Nixon is waging: a basic return to reactionary values, authoritarianism, individualism, male stereotypes, unquestioned racism, and support for America's imperialist spirit. There is no place in such a crusade for a program of amnesty, and we should understand that a victory in the amnesty campaign would be a major defeat for the Nixon administration in terms of fostering an even more widespread distrust and questioning of these basic values.

ECONOMICS–The U.S. is faced with a crisis of unemployment which is more than just a question of the lack of jobs in certain areas for which training programs might be a cure. There is a lack of jobs across all levels, and there is an inability in our economic system to create more jobs. Therefore, the prospect of tens of thousands of young, employable, largely semi-skilled and unskilled men being thrown into the labor market is not a desireable one. Additionally, these particular young men have already challenged the government once, and a realistic appraisal of them is that they are likely to do so again. The government can be expected to advocate jail sentences or military service as a way of breaking this spirit of militancy so that these men might return to the economic system as passive participants. The fact that many of them who have taken the greatest risks and hence, face the greatest penalties, are third world people does not make them desireable in a racist economy.

Less than honorable discharges (which prevent men from being considered for most jobs and places an additional financial burden on the women in their families) puts the blame on the individual and allows the government to maintain the cruel myth that if one doesn't oppose the system, a good job is the reward. This is another reason why the government would be opposed to upgrading these discharges. Once the method by which these men are labeled and dismissed as being unemployable is removed, a huge segment of the underemployed or unemployed work force would themselves have, and would encourage others to have, a very different response to government propaganda about employment opportunities. An "individual" problem would clearly become the collective problem that it is, and public confidence in the U.S. economy would be undermined. The real cause of unemployment could then be focused upon.

OUR STRATEGY

DEFINITIONS--There has been some discussion of the appropriate terminology that we should use. Basically, we feel that we are not asking for forgiveness. We are committed to the position that all forms of resistance to the war were morally, politically and legally correct, and we support the brothers and sisters in all those actions – direct or indirect. If no crime was committed, then the state has no authority to forgive.

The term "amnesty" legally fits our requirements because it means "abolition of the crime." In other words, there is no penalty because there was no crime, the term "pardon" is legally used to mean the abolition of the sentence, while recognizing that a crime did occur. It is true that popular usage of the term amnesty carries the connotation of forgiveness which maintains that a crime did occur. We must weigh this public definition of the term against two factors: first, that amnesty is legally distinguishable from pardon, and that secondly, the term amnesty is the one which most American people are using. The concept of unconditional amnesty does indeed signify what we want, provided that all the differing kinds of reisitance are included. Our analysis means that we will educate people to the fact that no crime was committed; indeed, it will form the basis of our campaign. Since the term will be widely used in any event,we feel that we should attempt to make it our term, with our definition.

CASE-BY-CASE REVIEWS--We must be particularly careful to avoid the term of pardon, not only because it indicates that a crime was committed, but also because it carries with it the notion of a case-by-case review of each individual "offender." We support unconditional amnesty for any group that is involved, and are opposed to individual reviews for several reasons. First, individual reviews of draft avoiders would allow the government to pick and choose among those who have desireable skills as opposed to those who do not. It would grant the state the opportunity to select its citizens from those in exile, and would mean that racist and class values would always prevail. Secondly, those men who left the military did so for the same reasons that civilian men refused to enter the military. Both kinds of actions are specific forms of anti-war, resistance for which we want amnesty. Case-by-case reviews would allow the government to obscure that fact by employing civilian authority to make the decisions regarding civilians, and keeping military decision-making virtually invisible. Thirdly, our more general political goals involve the stressing of collective actions and collective responsibility. Part of the educational work to be done in an amnesty campaign involves attacking the notion of individula separation. Case-by-case review would reinforce that tendency.

DISCHARGE UPGRADING--We feel that all military personnel should receive one type of discharge. Previously issued discharges under less than honorable

conditions should be upgraded to the one general type of discharge. Our concept of universal, unconditional amnesty means that there will be no case-by-case review of these discharges. All of them reflect the racism and oppression of the military machine, and actions taken by GIs are a statement of protest and outrage. They are directly or indirectly a result of the Indochina war and the institutions that created it.

Some of these acts resulted in the criminal prosecution of GIs. Most should have been prosecuted in the civilian courts, and we hope that one of the results of the campaign for amnesty will be that the military ceases to prosecute its personnel for acts that are considered to be crimes by civilian laws. Obviously, GIs who were prosecuted by the military and who have been issued less than honorable discharges as well, bear the burden of paying twice for the same crime. We advocate one type of discharge for the future, the upgrading of all previous discharges, and civilian jurisdiction over judicial matters. For those who charges are still pending, we feel that amnesty should include having them dropped for both military and civilian resisters.

UNITY IN DEMAND FOR AMNESTY

Our analysis of amnesty, therefore, brings us to the inescapable conclusion that all forms of resistance must be united. This is the best manner by which to make our political values clear, and it is also the most realistic way of uniting that large body of American citizens who are personally involved in one or another aspect of the issue. The government would undoubtedly prefer to individually bring back the desireable draft avoiders from abroad, to quietly try draft resisters at home, and to select penalties for them which reflect their own racist and class bias. The government would prefer to keep the workings of military "justice" as far from public view as possible; the military would like to be able to deal with its own dissenters according to its own standards of discipline as a way of maintaining absolute obedience. The broadest possible amnesty campaign is the best way to offset the government's preferences in these matters. A campaign which brings draft avoiders into the foreground at the expense of military resisters is politically self-defeating; it reinforces the anti-working class bias of American society, and it reinforces the racist nature of oppression. Including the question of upgrading discharges means that the military would be additionally faced with confronting its own racist machinery.

Our political analysis leads us to the position that the racist and class bias of American society not only structures the form of the ruling class, but also attempts to structure the forms of dissent. Those who resisted legally were, for the most part, those who were able to do so; those who resisted illegally were forced to do so. The most vulnerable people have once again taken the greatest risks and are being asked to pay the greatest penalties.

A campaign conducted from this perspective increases its educational value; it prevents it from being only moralistic, and it unites the broad spectrum of the anti-

war movement. Historically, the draft resistance orientation of the early anti-war people was based on a moral objection to participation in the Vietnam war or in war in general. This created an unfortunate separation between these resisters and those who were forced, directly or indirectly, into the military. With fewer options available, the people who went into the military resisted the war and-or racism and oppression by all means open to them. Far from being the "enemy," as early civilian anti-war people viewed them, resisters in the military were in fact immediate or potential allies. This division, which was antagonistic at times, played directly into the hands of the government. More clearly than the civilian anti-war movement, the government recognized the class nature of the difference between those who fought and those who did not. They sought to exploit that difference by calling attention to the backgrounds of most draft "dodgers." They also tried to get support for the war by appealing to working class resentment against those who were able to resist the draft. Of course the government would now seek to maintain that gulf by appearing to reluctantly and quietly grant amnesty to a few draft resisters while ignoring, if not directly attacking, military resisters. Our amnesty campaign should prevent this from happening because our unity is based on complete support for all forms of resistance.

AMNESTY AS PART OF THE ANTI-WAR MOVEMENT–A white deserter from the Military Police now in Canada said: "I want amnesty because amnesty is the best way for America to confront what the Vietnam War was – if we don't confront it, it will happen again." He deserted in 1970, after the protests at Jackson and Kent State concerning the invasion of Cambodia. The issue of amnesty, therefore, speaks to the heart of the anti-war movement. It is recognition of the price that the American people have paid in order to oppose the war. Amnesty does not ignore the fact that thousands of American young men were killed or wounded in Indochina. It puts that fact into perspective regarding the price that the Indochinese people have paid. It also forces the realization that Americans should never have been sent to fight the Indochinese people in the first place.

Secondly, the issue of amnesty is of direct personal importance to hundreds of thousands of Americans whose sons, friends, and neighbors are exiles, fugitives, imprisoned, or unemployed because of the consequences of opposition to the war. It is perhaps the only anti-war issue that the government is powerless to quiet down with its propaganda regarding the war as being over. This is because the amnesty issue is just beginning to increase in momentum, and it is an issue which is crucial to millions of people.

Fourthly, it makes the connection between the GI movement and the civilian movement clear by recognizing the magnitude of the GI struggle. The attention and consciousness of the civilian movement to that struggle will help to point out possibilities for future united political work, and will be a clear step forward in the breakdown of class and race bias.

AMNESTY AS PART OF THE ANTI-IMPERIALIST MOVEMENT–Recognition of U.S. reasons for involvement in Vietnam meant, for many Americans, the beginnings of an understanding of U.S. imperialism. The job of public education

has only begun in that area, and we feel that the campaign around amnesty should be regarded as essential to an understanding of the ways in which imperialism functions. We are inescapably led to the conclusion that imperialism abroad hinges on public acquiescence, if not support, at home. Specifically in terms of an imperial army, it is crucial that the questions we have discussed about who fights in such armies be raised among the general population. An amnesty campaign supports the basic premise that no army has the right to force people to fight imperialist wars, through either indirect economic pressure or by direct means of a draft or criminal prosecution of military resisters. Resistance to the Vietnam war, both inside and outside the military, provides us with an important guide for future opposition to imperialist wars. If the essentially middle-class draft avoiders are focused on, it will mean that those politically conscious members of the working class will not be recognized. The working class as a whole will then be perceived as an opponent, instead of as the class most directly affected and the strongest political ally. In addition to narrowing rather than broadening our base of support, it will also reinforce the racist and class bias of American society by distinguishing "political" and "moral" acts from "criminal" acts. The breakdown of the U.S. military was directly caused by the political consciousnesses of basically working-class young men and women. This is a crucial fact of our analysis in terms of opposition to future wars of U.S. aggression.

AMNESTY AND THE VOLUNTEER ARMY–The end to the draft was seen by the middle class as a victory for the anti-war movement. However, were must closely examine the implications of a professional (volunteer) army.

A fundamental reason for the transformation into a volunteer army was a rapid technological development of weaponry and the resulting need for highly trained soldiers whose careers would be long-term. Related to this fact is the different strategic role which will be assigned to the army in the future. For example, ground forces for wars fought abroad will be provided by the governments who seek U.S. intervention. This is the meaning of the Nixon Doctrine or the "Vietnamization" of all third world countries. Another way of looking at the same strategy would state that, in the future, the people of the third world will be forced by their ruling classes to fight for U.S. interests. This does not mean that the U.S. will play a less imperialist or less vicious role in future wars. On the contrary, this means that the U.S. Air Force, Navy, and Special Forces, as well as the entire technological appartus will intervene more quickly and forcefully in "support" of "indigenous" armies. "Vietnamization" was in some respects more brutal a policy than direct U.S. intervention because it was even more manipulative of the people of Vietnam. Vietnamization also allowed government propaganda at home to increasingly ignore the fact that the U. S. was intervening. A professional military has the virtue, therefore, maintaining domestic ignorances of U.S. imperialist policies on the one hand, and permitting a more rapid and more skillful kind of military intervention on the other.

DOMESTIC COUNTER-INSURGENCY–At home, a professional army is supposed to play a vital role as a "law and order" force. It will be used in the streets of

the U.S. as a counter-insurgency force in dealing with ghetto rebellions, strikes, demonstrations, etc. Essentially, the ruling class has transformed the ground forces of the U.S. military into a civil war army. Poor people, recruited by severe direct and indirect economic pressures, will be expected to give a life-time of service.

These expectations will have several effects on the lives of future soldiers. The U.S. military is acutely conscious of the need for a tightening up of discipline and morale within an army which will be called on to fight its own people. Acts of desertion and refusal to obey orders are much more crucial in such a situation. Life in the army will have to be ever more isolated and sealed off from civilian life. Such life will also have to be isolated from movements for social change on the part of civilians. The army will have to be a "state within a state" in order to perform well as a counter-insurgency force. This will make the influence of a civilian movement within the armed forces more difficult than it has been during the last few years. Organizing of soldiers by civilians will be extremely difficult. It is for these same reasons that the army is also making military life much more attractive and personally comfortable.

A broad-based amnesty campaign which stresses the correctness of individual responsibility for resisting criminal orders would help to break down the new ideals of the military machine. It should be seen as a way of opening the minds of new recruits for the volunteer army to the possibility and necessity for refusing orders that they find objectionable on political and moral grounds.

AMNESTY AND DOMESTIC ORGANIZING--In terms of the organizing efforts of many different kinds of groups, a campaign for amnesty given unconditionally for all forms of anti-war resistance should be regarded as highly useful. We regard such a campaign as lasting between 4 and 6 years, and think that during that period of time, many issues will be raised which community groups would be able to include and use in their work. Most importantly, it points out the ways in which working class people, particularly third world, have paid a high price to oppose the war, and the penalties that they face as a consequence. The amnesty campaign represents the real interests of both working and middle class families whose sons rebelled, and such families are beginning to be organized into active participation in such a campaign. It will be perhaps the first time that the working class, both white and third world, can have a direct and visible means of participation in the anti-war movement. Therefore, amnesty is a good way in which to unite large numbers of people around an issue that is important to the largest segment of the population.

CONCLUDING THOUGHTS

An amnesty campaign which presents the class analysis that we have spoken of should fit in very well with the attempts of people to point out ways in which class structuring operates in America. It should help those who engage in educational and agitational work in efforts to combat U.S. imperialism. It will be possible to use amnesty campaign material in work that may have to be done around the courtmartials of anti-war P.O.W.s, as well as in the work which will be done around the P.O.W. issue in general. Educational work concerning the people of Indochina may take into account the fact that millions of American people over the last ten years came to regard the Indochinese as our friends, rather than as our enemies. That beginning sense of friendship is certainly part of the reason for refusal to participate in the Vietnam war, and as such, is another part of a campaign for amnesty.

The issue of amnesty, then, belongs to those who resisted, opposed, and organized against the war. Amnesty applies to those who refused to fight from the beginning; refused to support a military machine; or those who, as veterans of the Vietnam war, brought the meaning of it home to America in ways that others were never able to do. Perhaps the feelings of the exiles and the veterans are the most important for the American people to understand. They are both the victims of U.S. intervention in Indochina, and it is significant that there is agreement among those who refused to fight and those who did fight. It is the U.S. government who ought to be asking for pardon, not amnesty, from those whom it caused to be killed or wounded, to kill or wound others, to resist those alternatives by destroying their own lives, or to live in a society which imposes life-long penalties on them. The history of the anti-war movement is the history of decisions and actions that are among the most fundamentally decent and righteous actions that women and men have ever taken.

For those of us who came to understand the true nature of the war, we are indebted to the work and courage of these military and civilian resisters. Through resistance, we have come to realize that the war was white America's war, the war of the ruling class and the defense industry, the war of the rich, the racist, and the imperialist. There could be no more progressive a step in our work than to demand universal and unconditional amnesty. Our work goes on. We demand that there is never again a U.S. government which violates the basic spirit of its own people or of the people of the world.

UNITY-STRUGGLE-VICTORY



Vietnam Veterans Against the War

Winter Soldier Organization

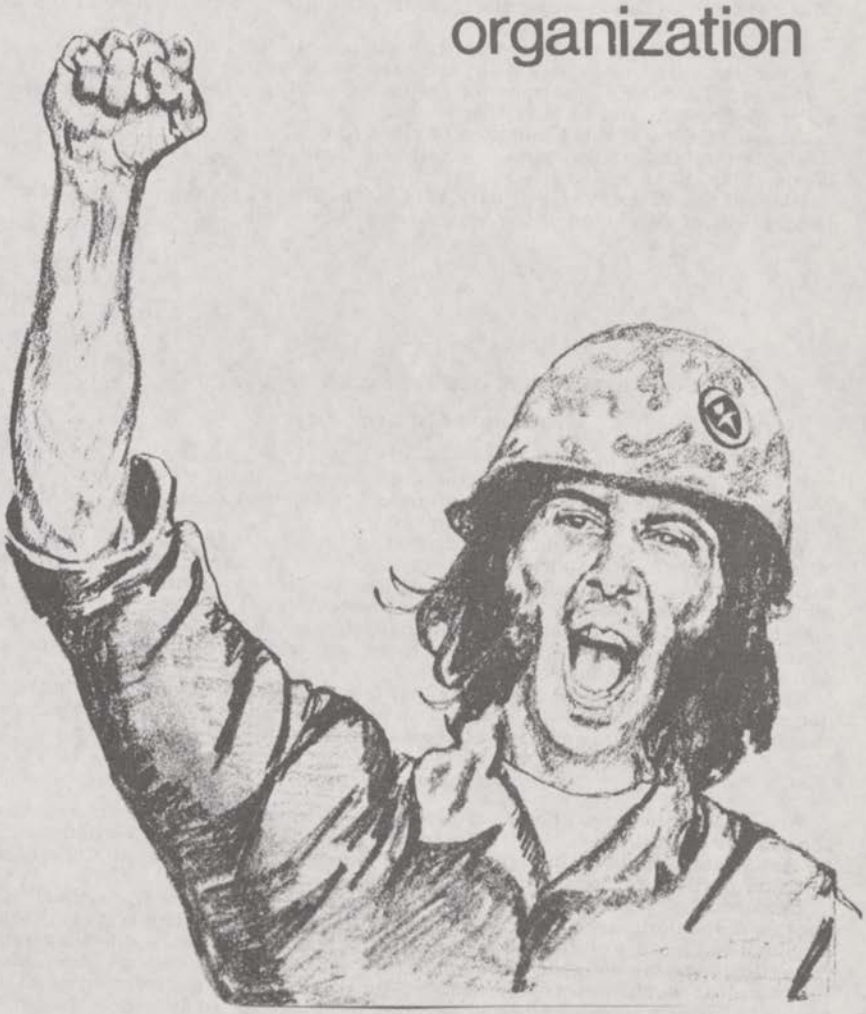
NATIONAL OFFICE
827 WEST NEWPORT
CHICAGO, ILL. 60657
TEL. (312) 935-2129



Salsedo Press

vietnam veterans against the war

winter soldier organization



VETERANS OF WORLD WAR I,, USA, INC.,
DEPARTMENT OF OKLAHOMA,
Shawnee, Okla., February 21, 1974.

RESOLUTION

Whereas a number of individuals, groups, and organizations have asserted themselves as in favor of amnesty for those of our young men now in exile in foreign countries; and

Whereas the Veterans of World War 1 has always opposed those who did not see fit to serve their country when called upon to do so; and

Whereas 142,381 U.S. Citizens were granted Landed Immigrant Status in Canada in Fiscal Years 1965 through 1971 (Canada Department of Manpower and Immigration); and

Whereas five to twenty thousand young U.S. Males were in Canada Illegally or as "Visitors". (Estimated by the Canadian Council of Churches and aid groups in Canada); and

Whereas these Deserters now want to come back to the United States and live in peace, the peace made possible by our Vietnam Veterans; Now be it

Resolved, That our Department of Justice refuse them entry and declare them guilty of Treason; and be it further

Resolved, A copy of this Resolution be given to the Press, a copy to Department Headquarters and a copy sent to National Headquarters of the Veterans of World War 1.

Adopted this 21st day of February 1974 by the Board of Administration of the Department of Oklahoma of the Verterans of World War 1.

Attest:

HARLOW W. FOUEKS,
Department Adjutant.
JAMES J. ———.
Department Commander.

CONFERENCE OF MAJOR SUPERIORS OF MEN, U.S.A.

A RELIGIOUS CALL FOR AMNESTY

Aware of the need to speak to value issues in American society, and mindful of our role as religious leaders within the Catholic community, we members of the National Executive Board of the Conference of Major Superiors of Men address ourselves to the critical question of amnesty.

We consider amnesty to be a positive act of compassion directed to our fellow citizens who are in prison or in exile because of their response to laws relating to military service. It is a proclamation that these persons are free to return to their families and homes, exempt from all legal prosecution for whatever actions they may have felt obliged to take regarding participation in the Vietnam war. It restores them to their full legal status of living and working in the United States as free and useful members of society.

Amnesty does not mean "forgiving"; it is not a judgment of condemnation, nor an act of condonation. It is simply an act of "forgetting," a wiping clean of the slate, an overlooking of any past legal transgression.

A. WHY AMNESTY NOW?

We feel that the most urgent need facing the United States at this moment is the need for *reconciliation.* After a decade of bitter dispute over the Vietnam war, we Americans need to be brought together, to bind up our wounds, to unite in a common purpose to promote peace and justice.

Thousands of young men are currently in prison or in exile from the U.S. because of the positions which they took on the Vietnam war. Their status is both a symbol and a cause of division in our country. Amnesty would be a healing and reconciling measure designed to overlook the past and move a united nation into the future. It would restore confidence in the ability of our government and its people to foster a sense of renewed purpose, especially as we approach the 1976 Bicentennial Celebration.

B. WHAT KIND OF AMNESTY?

We feel that the criterion to be used in deciding what kind of amnesty is chosen is clear: what best promotes the goal of reconciliation? We believe that a *universal* and *unconditional* amnesty will do the most at this time to promote reconciliation.

1. It should apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service. This will affect those who have avoided the draft through going underground or leaving the country, those who have been imprisoned because of non-cooperation or forms of conscientious objection not recognized by our courts, and those who have left military service or have been imprisoned because of refusal to take part in combat. (We are not speaking here of criminal offenses unrelated to the draft and the war.)
2. If it is to be a true forgetting, the amnesty must not impose any penalizing conditions, such as alternative service or recording the facts of the case in public records. Any penalizing conditions would not heal division nor restore harmony to the nation.

C. CALL FOR AMNESTY

As American Catholic religious leaders committed to justice and peace, we call upon the President and the Congress to take the necessary steps to grant such an immediate universal and unconditional amnesty.

We are aware of the political difficulties involved in such an action and of the heated debate to which the issue of amnesty gives rise. There are certainly honest differences of opinion about the desirability, feasibility, and consequences of such action. However, it is our considered opinion that the amnesty we call for is the surest path to the promotion of reconciliation in our nation.

D. PLEGE FOR ACTION

In order to commit ourselves to the task of reconciliation, we are taking the following actions:

1. We are sending a copy of our Call to all of the members of the Conference of Major Superiors of Men, inviting them to share this statement with their own communities, to thereby stir up discussion and reaction, and to send their response to us.
2. We are communicating our position directly to President Nixon and to all the members of the Congress.
3. We are inviting members of the Conference of Major Superiors of Men to join their signatures to ours in support of this statement on amnesty at the Annual Assembly in June, 1973.
4. We are asking the American Catholic Theological Society to commission a task force on the theological dimensions of amnesty in order to deepen the understanding and further acceptance of this act of reconciliation by Americans.

MEMBERS OF THE CMSM NATIONAL EXECUTIVE BOARD

Rev. Paul M. Boyle, C.P., President, Conference of Major Superiors of Men, Chicago, Ill.
Rev. Alan McCoy, O.F.M., Oakland, Calif.
Rev. Joseph Francis, S.V.D., Los Angeles, Calif.
Brother Leonard Voegtle, F.M.S., Roslyn, N.Y.
Rev. Flavian Dougherty, C.P., Union City, N.J.
Rev. Thomas Stransky, C.S.P., Scarsdale, N.Y.
Rt. Rev. Jerome J. Tremel, O.Praem, St. Norbert Abbey, De Pere, Wis.
Rev. Charles Hughes, Cincinnati, Ohio.
Rev. William G. Guindon, S.J., Boston, Mass.
Rev. Michael F. Daniel, S.A., Chappaqua, N.Y.
Rev. Donald Ehr, S.V.D., Washington, D.C.
Brother Francis Beck, F.S.C., Lafayette, La.
Rev. Justin Ryska, O.S.M., Berwyn, Ill.
Rev. Stephen M. Ryan, O.S.M., Buena Park, Calif.

STATEMENT ON AMNESTY, SUBMITTED BY THE FELLOWSHIP OF RECONCILIATION, NYACK, N.Y.'

Whereas there are many thousands of Americans in this country or overseas who have resisted or otherwise refused participation in the draft or military service in the war in Indochina or in earlier wars, or who have engaged in other acts of resistance, and have therefore been convicted of or are subject to prosecution for offenses against the government; and

Whereas their offense is political, not involving violence against persons, and is unlikely to be repeated because it relates to a war that is past; and

Whereas many of these persons are on principle opposed to violence and will encourage respect both for persons and for nonviolent processes of change; and

Whereas it is desirable to heal the divisions of war and end the alienation of citizens from their government: Therefore, be it

Resolved, That those who face or have suffered criminal or administrative penalties for acts of evasion of or resistance to the draft or military service or war, involving violations of laws and regulations, including the Selective Service Law and the Uniform Code of Military Justice, prior to the actual ending of the war in Vietnam should be granted a full, broad and unconditional amnesty.

Adopted by Executive Committee of Fellowship of Reconciliation February 12, 1973.

RECONCILIATION AND AMNESTY—AN ADDRESS BY REV. ROBERT V. MOSS, PRESIDENT, UNITED CHURCH OF CHRIST, FEBRUARY 5, 1973, CHICAGO, ILL.

Two recent events point up the crisis of confidence between young people and America's institutions today. On the first of January of this year, thousands of eighteen-year-olds in New Jersey stood in line to get into bars, legally open to them for the first time.

Two months before that, when first they had the right to vote, those same eighteen-year-olds significantly failed to stand in line in any great numbers. Perhaps their acceptance of the institution of drinking, coupled with their rejection of the institution of voting, tells us something of the mood of young people today.

The generation now reaching its majority seems to have lost faith in its institutions. This is not a bomb throwing, or even a marching generation. Its mood is not apathetic—it might be more accurately termed quiescent—ominously so.

The fact that these youngsters can look forward to college, a job and a future free of the threat of the draft should not lead us to conclude that they are unaware. I believe they are acutely aware of the grievous wrongs committed in the name of America in the past decade. They are aware of the near destruction of the tiny country of Vietnam and its people. They are aware of the tremendous burden shouldered by their older brothers and uncles who fought in Vietnam. They are aware of the violation of their own moral values committed in the name of "peace with honor." And I believe they long for reconciliation in America today.

Now that the hostilities have ceased in Vietnam and the way is open for peace in Southeast Asia, I want to speak of the need for reconciliation at home, and to suggest ways of achieving it. To heal America's wounds in the wake of the Vietnam war we dare not try to hide our differences; rather we must recognize those differences and face them squarely. It is in this context that we speak of reconciliation.

I want particularly to speak about amnesty for those who have resisted this war. But resisters are only one of a number of groups who have been damaged by the war.

There are first the men who have died in this war, and their families. The wives, the parents and the children of those who gave their lives want desperately to believe that their sons and husbands have not died in vain. What can we say to these people, to ease their deep grief? Certainly there is no glib answer. They did die in the service of their country. For many this may be enough. But for those who believe that the war was unjust this may not be an adequate understanding. I know that among those whose sons will never come home there are parents who say their sons did not die in vain . . . because they died in a war that was so despised that there may never be another. I can only pray that that is so. But I suggest that it is the responsibility of the religious community to wrestle with the question of the meaning of the sacrifice which these men have made. It may very well be that we shall not find that meaning until we consider their sacrifice in the context of that which Vietnamese young men made in devotion to their own native land. We are dealing not just with a national tragedy but a human tragedy with world dimensions.

Other victims of the war include the men who have been taken prisoner and their families. Thank God they are now on the way home. It is clear that the military and the government recognize our special responsibility to them.

Then there are the more than six million veterans of the Vietnam era. One in four of these veterans hasn't even a high school diploma. Yet, only about fifteen percent of the non-graduates make use of the G.I. Bill to further their education. The rest have little to offer the job market.

Why aren't Vietnam era veterans using the G.I. Bill, as did the veterans of World War II and Korea? Possibly because the present bill offers too little help. Another reason, according to Richard Killmer of the National Council of Churches, is that colleges and universities have been slow in responding to the special needs of veterans. Until recently, few institutions had developed preparatory programs or changed admissions requirements, set up counselling programs or hired tutors for the veterans.

Reflecting their mistrust of government and other established institutions, veterans have made far less use of the Veterans Administration than did those of past wars. The Veterans Administration is looked upon as more of the same old "army game," and they have had their fill of games.

Until 1972 the unemployment rate for Vietnam veterans was substantially higher than for non-veterans of the same age. But as a result of efforts made by the Federal government, the states and business and industry, the jobless rate among veterans has fallen substantially and is now below that of non-veterans of the same age. But for blacks and other minority veterans the problem persists, with unemployment greater than that of non-veterans of the same age gruos.

Estimates of the number of Vietnam era veterans addicted to heroin range from 60,000 to as high as 100,000. Most of these men were not using drugs before they went to Vietnam. Some turned to heroin to fight boredom. Others used it to blot out the agony of war. Now it is the major factor in their daily lives.

Most Federal agencies have not dealt with the problems of veterans on drugs. Senator Cranston and other Congressmen have accused the Veterans Administration and other agencies of dealing inadequately with the addicted veterans. There are waiting lists for methadone treatment at Veteran Administration hospitals in New York City, with only some 50 beds available.

But drug abuse is only the symptom of the veteran's problem. Psychiatrists working with veterans have identified what is now called the "post Vietnam syndrome"—which includes guilt feelings; frustration at having been made a scapegoat for the country's failures; rage at having been duped and manipulated; a feeling of having been brutalized by combat; alienation from oneself and from society; an inability to think well of oneself, and thus to love others and accept love in return.

The veteran cannot understand why he is rejected by the society he thought he was fighting for. Even worse, rather than expressing outright hostility toward the veteran, our society is even more prone simply to ignore him.

One problem of course, is that a high proportion of veterans are black, Puerto Rican, Chicano, or from another minority. Some of these men actually thought they could win freedom and respect by going to Vietnam. Imagine their rage and frustration upon their return home to nothing but apathy, rejection and unemployment.

If we are really to meet their needs we are going to have to return to our domestic priorities. We have lost the vision of the great society and we need badly to recover it and to move toward it. Essentially the responsibility is going to lie with the President and the Congress, but particularly with the President and much will depend upon the kind of leadership that he offers during the next four years. I hope he will give us a reconciling kind of leadership as we face the future perils and problems.

But in addition to the men who have died in combat, those taken prisoner, and the millions of discharged veterans, others have been victimized by this war. They include the draft resisters who have fled into exile, those who have gone underground, and those who have deserted the armed forces. The Seventh General Synod of the United Church of Christ, meeting in Boston in the summer of 1969, recognized the plight of these men when it urged the President to grant "at the earliest possible opportunity, amnesty and pardon for those who, for actions witnessing to their beliefs, have been incarcerated, deprived of the rights of citizenship, or led by their conscience into exile. . . .We urge these bold actions because this nation needs, and is strong enough to embrace, both those who have engaged in the Vietnam conflict and those who have opposed it.

As a result of this action, I was asked in the fall of 1969 to serve on the team of church leaders who, representing the National Council of Churches, met in Windsor, Ontario, with representative of the Canadian Council of Churches, and with representatives of the draft exile community there, to determine what ministry the churches could perform. We reported to the Assembly of the National Council in December, 1969, recommending that the Canadian Council of Churches engage in a ministry to the deserters and draft exiles in Canada, and that the National Council in this country concentrate on a ministry to the families of those men.

I was able to do this without question, largely because of the action taken by our General Synod. It fell to me as executive officer to move forward, carrying out that resolution in ways that seemed appropriate.

And, of course, the United Church of Christ was not alone. Strong pleas for amnesty have been made by the General Assembly of the United Presbyterian Church in the USA; by the United States Catholic Conference; the National Council of Catholic Bishops; the American Baptist Convention; the United Methodist General Conference; the Lutheran Council in the USA and others. The National Council of Churches, through its General Board, recommended in December, 1972, amnesty for:

> draft resisters and deserters who have exiled themselves to other countries;
>
> those currently in prison or military stockades, those on probation, those who have served their sentences, and those who are subject to prosecution for violations of the draft or military law;
>
> draft resisters and deserters who have gone underground to avoid prosecution;
>
> Vietnam era veterans with less than honorable discharges; and those who have committed civilian acts of resistance to the war or are being prosecuted upon allegations of the same.

One of the most moving pleas for amnesty came from Cardinal Cushing of Boston, in his Easter message of 1970; "Would it be too much," he asked, "to suggest that we empty our jails of all the protesters—the guilty and the innocent—without judging them, call back over the border and around the world the young men who are called deserters, drop the cases that are still awaiting judgment on our college youth? . . . Could we not do all this in the name of life, and with life, hope . . .?"

In my denomination questions were raised, of course, by people who felt these men were traitors. But in trying to answer the questions, we were able to establish a dialogue within the church. Out of that dialogue came the realization that many families in our churches, particularly in Ohio and Pennsylvania, would not be in the United States if their grandparents had not fled Germany in the nineteenth century, at a time when conscription was imposed on themen. Many of the exiles themselves recognized that they were carrying on a family tradition.

After the events of the Spring of 1970, I proposed that some of the same people who had been in Windsor, Ontario, go to Vietnam. Dr. Robert J. Marshall, president of the Lutheran Church in America, Dr. William P. Thompson, stated clerk of the United Presbyterian Church in the USA and I were finally able to get clearance through the Chiefs of Chaplains, and we spent a week in Vietnam, talking to over 200 chaplains.

The point we tried to make in those two visits—one to Canada, one to Vietnam—was that the church must be concerned for all human beings, regardless of the positions they may have taken. Although we may not be able to sympathize with, or even understand their positions or actions, we recognize that they are children of God and created in his image. The church provides a chaplain for men in prision, even—or especially—for convicted criminals. On that basis we were able to convince some of our people of the need for a ministry to resisters, deserters and exiles. But the time has come to move beyond ministry to amnesty.

Amnesty, of course, does not mean forgiveness. Its root word is related to amnesia, and it means "to forget." Amnesty concerns the law's ability to undo what it has done in the past. To forgive a violation is to pardon. But amnesty is to forget, to erase, to blot out in recognition of a greater interest—in this case the reconciliation of the nation.

Forgiveness implies guilt, and this is highly offensive to all potential recipients of amnesty. They admit to *illegal* acts, but not to immoral acts. Amnesty has to do with the legality of the act. One of the points that impressed me in our discussions in Windsor was a statement of one of the exiles, who said, "We're not particularly interested in amnesty—we're really interested in adequate draft

counselling. We worry about our younger brothers and others who will go through this. Many of us would not have been here if we had known all the alternatives open to us."

Many of the Canadian exiles have become landed immigrants, some have become Canadian citizens. But even they want the right to travel back and forth to their homeland.

I am reminded that in ancient Israel the year of jubilee was celebrated every 50 years. On that occasion all Hebrew slaves were given their freedom. The poor were restored to their ancestral homes which they may have been forced to sell. The land was permitted to lie fallow. It marked a blotting out of the past and a new beginning for the whole nation. I believe that we should view amnesty in that same spirit: as a fresh start and a step into the future.

The history of amnesty is illuminating. During and after the Revolutionary War, some 80,000 Loyalists fled the country, mainly to Canada. Some eventually returned, but public opinion and oppressive laws kept the vast majority in exile. Yet deserters were not punished, and shortly after the new republic was founded President Washington proclaimed amnesty for participants in the Whiskey Rebellion. Thus was the tradition of amnesty established. In the Civil War, desertion ran to more than ten percent, while draft evasion was rampant. No action was taken against either deserters or draft evaders in the North after the war. And President Lincoln proclaimed a series of amnesties for Confederate soldiers throughout the war. Afterward, no rebel leaders were executed, no one was brought to trial for treason, there were no mass arrests, and no one was deprived of property or forced into exile by government policy.

Presidents Harding and Coolidge granted amnesties after World War I, and President Truman appointed a commission which reviewed individual cases and granted pardons for some of the deserters of World War II.

In this war, a total of from 350,000 to 400,000 need some sort of amnesty. Such a large group could not be dealt with on a case-by-case basis. What is needed is a class action that would include everyone mentioned in the National Council of Churches policy statement that I quoted before. That statement recognizes that "genuine reconciliation demands that amnesty be granted to all who are in legal jeopardy because of the war in Indochina."

Many of these men are suffering in one way or another for having adopted too soon, positions which a great number of Americans have since adopted. The nation's self interest requires that they be granted amnesty in the name of reconciliation.

For the issue of amnesty will be with us—dividing us—until it is resolved. Amnesty has been an issue after every other war, and will be more of an issue after this war, simply because this war has been the most divisive the nation has fought. The churches and the synagogues have a role to play in this reconciliation. Unless the religious community takes the lead, it will be delayed and may fester in the nation's soul indefinitely. For understandable resaons both Congress and the President are reluctant to take leadership on this issue. And so I belive the religious groups of this nation are called to create the climate for amnesty. We owe our country and ourselves no less.

TESTIMONY BY THE WAR RESISTERS LEAGUE ON AMNESTY, NEW YORK, N.Y.

I am Irma Zigas, Chairwoman of the War Resisters League. For fifty years the League has been striving, nonviolently, to remove the causes of war.

The membership of the War Resisters League contains a higher proportion of felons than almost any other organizations in America. Under these circumstances it is almost unnecessary for us to issue a statement in support of unconditional amnesty for war resisters, and yet it is particularly appropriate.

There are four general categories that would be affected by various amnesty proposals now under consideration. The first consists of men who refused military service and were imprisoned or are now under indictment, or those men and women who, finding themselves already in the service and increasingly opposed to the war, deserted, were placed in military prison or were given less than honorable discharges for resistance. The second group involves all those who actively resisted the war through counseling resistance, by raids on draft board files, by destruction of war related government materials, or by the release of secret government

documents. The third group consists of those who left this country for Canada or elsewhere rather than serve in a war they deeply opposed. And the fourth, the less than honorably discharged Vietnam era veterans.

Some of those who might be affected by an amnesty are guilty of technical violations of the law, but the far more basic violations of law have occurred through the actions of government, military and corporate officials.

Unilaterally and without cause, in violation of our own Constitution and of international accords and agreements, the government of the U.S. made war upon the whole people of Vietnam, of Laos and of Cambodia. Under the decisions of the Nuremburg Tribunal these constitute crimes of war and those who conspired to commit these crimes could be tried by an international court of law. Nor can one limit responsibility to the Executive and Legislative branches of government. The highest officials of the military have known the nature of the war and have sought to transfer responsibility from the higher ranks to the lower, so that, for example, Lt. Calley alone was found guilty of the My Lai massacre.

In addition, certain major corporations have designed and manufactured for their own profit weapons the principle use of which is against civilian populations. It is not possible for corporate executives to plead ignorance of the uses to which these devices have been put. Weighing the "crimes" committed by war resisters against the crimes committed by war-makers it would seem to us that the amnesty question has been stood on its head. Those now imprisoned in this country or living in exile do not need forgiveness. They stand honored before history. For those who have been in service and have been less than honorably discharged, amnesty must not be forgiveness but the full and immediate restoration of their civil rights. Where they are in jail they should be released at once. Where they are beyond our national borders, they should be welcomed back into the ranks of American society without penalty.

The League, having long opposed prison as ineffective in changing behavior and having argued that it served little purpose other than to inflict society's vengeance on those who could not afford a good lawyer, has grave doubts that war crimes trials would solve anything. That men such as Nixon, Laird, Haig, Colby, McNamara, Westmoreland, Humphrey, Rostow, Rusk, Bundy, etc. are guilty of war crimes seems obvious—but it is very doubtful that, even if tried and found guilty, prison would rehabilitate them. For all the years of their lives the men who plotted this war will be imprisoned by the knowledge that 55,000 Americans died, hundreds of thousands have been wounded, over a million Indochinese have been killed, their wounded are countless, their refugees number in the millions, vast numbers of cities, towns, and hamlets have been destroyed and huge areas of the land itself subjected to merciless environmental attack. The horror of these realities would drive sensitive people to nightmares from which no amnesty could grant surcease.

Finally, if My Lai was a reflection of the military system, so the war itself is a reflection of the American system as now organized. This war has been transparently evil, obviously an act of aggression, and so it has been fairly easy for many Americans to stand against it. But the ravaged lands and displaced people of Indochina provide tragic testimony that not only were the Americans the enemy, but violence itself. No war can finally be just, for in the end war implicates everyone on all sides in the commission of crimes against the innocent. We must continue to search for methods of achieving revolution without violence, of resisting evil without killing our neighbors.

STATEMENT OF JOHN F. HEILMAN, ASSISTANT NATIONAL DIRECTOR OF LEGISLATION, DISABLED AMERICAN VETERANS

Mr. Chairman and members of the subcommittee, in behalf of the Disabled American Veterans, may I express our appreciation for this opportunity to present our views on the subject of Amnesty and its application to those persons who, during the Vietnam-Era Conflict, illegally evaded or fled military service in the Armed Forces of the United States.

Before stating our position, I feel it would be of service to those Members of the Subcommittee who may not be familiar with our organization to briefly identify the Disabled American Veterans.

The DAV was founded in 1920 by a group of disabled World War I veterans for the express purpose of "advancing the interests and betterment of all wounded, gassed, injured, and disabled veterans, as well as their dependents,

widows, and orphans". As a Congressionally chartered non-profit veterans organization, the DAV has remained steadfast to this original premise during its 54 years of existence. Through the varied activities of our local chapters across the country, and through the service, employment, and legislative programs administered by our National organization, the DAV has compiled an impressive record of assistance to America's disabled veterans. Our membership, which today numbers 450,000, is composed solely of honorably discharged veterans who incurred a wound, injury or disability as a result of their active military service during a time of national emergency or war.

This thumbnail sketch of our organization's credentials is offered in the hope that the Subcommittee will better understand the basis for DAV interest in the subject of today's hearings.

Mr. Chairman, the various Amnesty bills presently pending before this Subcommittee can be broken down into three categories:

CATEGORY I

General unconditional amnesty to all personnel who evaded or deserted active military service during the Vietnam-Era Conflict. This would include not only those whose actions were related to an opposition to U.S. military/political policy in Southeast Asia, but also to those whose actions include nonpolitical, criminal conduct as well.

CATEGORY II

Limited amnesty via Presidential proclamation or through special amnesty review boards or commissions. Distinctions would be made in regard to the particular offenses committed, i.e., desertion, AWOL, failure to register or report for induction under the Military Selective Service Act, etc. The motivation for the offense, as well as the existence or nonexistence of violence, personal injury and property damage, would also come to bear. Judgments rendered could include the immediate granting of amnesty or amnesty after the performance of two to three years equivalent service performed in various Federal agencies such as the Armed Forces, Public Health Service and VA Hospitals, Volunteers in Service to America (VISTA), etc.

CATEGORY III

No amnesty whatsoever, with all cases being handled through existing military and civil judicial systems.

Addressing the third category of amnesty legislation, may I say that the DAV is aware that those who chose to illegally avoid or escape military service in the Armed Forces did so for a variety of reasons. We recognize that these reasons range from honestly held moral convictions against participating in any war and/or the taking of a human life, to a complete lack of any sense of moral responsibility at all. It quite naturally follows that true justice would mete out varying degrees of punishment to these offenders. The primary concern of the DAV is that justice be served, and we therefore make no vindictive demands for a "pound of flesh".

Mr. Chairman, in regard to Category I, the DAV is unalterably opposed to the granting of any unconditional blanket amnesty that would sweepingly and completely pardon those who fled or refused to serve in our Armed Forces. Initially, may we point out that despite implications to the contrary from the proponents of blanket amnesty, never in the history of the United States has a complete general amnesty, without penalty, been offered to those who violated our Nation's draft laws. To do so now would, in our opinion, set a precedent both dangerous and unwarranted.

The proponents of blanket amnesty argue that this would be a step in binding the wounds of divisiveness which rent our National fabric during the decade-long Vietnam-Era Conflict. We do not argue with the goal of National reconciliation, but we do take issue with the method that the advocates of blanket amnesty propose to achieve it. In this instance, to forgive completely would be synonomous with condoning completely, and it passes beyond our understanding to see how the countenance of law-violating actions can do anything but serve our country ill. We are a Nation of men equal under the law. Justice is a two-sided coin in that while it exonerates the innocent, it also punishes the guilty. If it is reasonable to assume that the granting of amnesty may be deserved in some cases, then it also holds true that in some cases amnesty may not be deserved at all.

This brings us to the legislation as contained in Category II, which falls most in line with the DAV's position on amnesty, with one exception. In no instance do we favor the so-called "punishment" of equivalent service in civil Federal agencies. Notwithstanding the requirements of lowest pay grade and nonaccrual of employee benefits, government employment can hardly be considered a punishment for a criminal offense. In our opinion, this proposal could even be considered insulting, in view of the fact that the present unemployment rate for veterans who incurred wounds, injuries, or diseases as a result of their military service is in excess of 14 percent. If there is government employment to be had, let us offer it to our unemployed disabled veterans!

Mr. Chairman, I have dealt at some length on the amnesty positions we do not support so as to give credence to our position which can be stated briefly.

It is the opinion of the DAV, as mandated by the delegates to our most recent National Convention, that if amnesty is to be considered, it should be done on an individual basis upon the petition of each person to a special Amnesty Review Board, appointed by the President. If after considering all factors, it is the opinion of the Board that amnesty is warranted, then so be it. If an adverse decision is rendered, then the punishment should be commensurate with the seriousness of the offense involved.

Mr. Chairman, we feel our position on the subject of amnesty is objective, just, and equitable, and that it best serves the interests of our country and its law-abiding citizens. It is in this spirit that we have presented our views today, and may we again thank you for this opportunity of doing so.

TORONTO, ONTARIO, CANADA,
February 21, 1974.

Hon. ROBERT KASTENMEIER,
Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: I have heard that your subcommittee is to hold hearings on a number of amnesty bills now before Congress, and I would like to submit the following statement for inclusion in the record.

As an associate of Amex magazine and an exile of almost four years, I would like to call your attention to an article in our forthcoming issue that deals with the psychological stress experienced by exiles. I will summarize here the conclusions of the article, which is based in part on interviews with Dr. Saul Levine (psychiatrist) and Dr. Angus MacDonald (psychologist), both of whom have worked with American exiles over an extended period of time.

Following the signing of the January 1973 Paris Accords, and the nominal ending of the war, there was widespread discussion of amnesty in the mass media. American exiles who had made considerable progress in adapting themselves to Canadian life suddenly found themselves facing questions they thought had been settled.

The sociology of migration describes the adaptation process as one of desocialization and resocialization. Although certain factors vary according to whether or not the migration is a forced one, the general pattern is the same. The forced migration of American war resisters to Canada began to decline in 1970. It seems safe to assume that the majority of exiles have been in Canada for well over three years. To the extent that adaptation is a matter of time, most exiles should be well into the resocialization process. All information available to us, in fact, indicates that a large majority of American exiles who have completed the five-year residency requirement are now taking out Canadian citizenship.

An example of the psychological stress experienced by exiles is provided in the case of a young professional who completed his training in Toronto, married a Canadian, and had no doubts about spending the rest of his life in Canada. With the increased discussion of amnesty, he faced mounting pressure from family, friends, and colleagues in the U.S. to get his case fixed by whatever means necessary. The moral worth of his original decision to enter exile was thus brought into question, and a near-collapse of his marriage was one of the effects of his uncertainty.

Those of us with some range of acquaintance in the American exile community could multiply examples such as the foregoing. Long-standing friendships have been broken, business associations dissolved, and established patterns of life forsaken. Of course, the passage of time since the outburst of amnesty discussion has seen the reestablishment of some equilibrium. But the main point is that every delay in the granting of amnesty is exacting a human toll.

Having outlined the psychological stress created among exiles by the ambivalence of their situation, I would like to indicate why conditional amnesty is equivalent to no amnesty. At the peak of migration, it was commonly estimated that there were 70–100,000 American war resisters in Canada. Our current estimate is that *at least* 15,000 exiles have remained in Canada. This figure is based on Canadian government immigration statistics and the number of war resisters who applied for landed immigrant status during the recent 60-day "grace period" (see *Amex-Canada*, Vol 4, No. 5, Nov–Dec 1973, p. 24). Those of us who remain in Canada are those who for various reasons have been able to sustain our original commitment over a long period of time.

I suspect that the majority of exiles would refuse any amnesty that entails punitive conditions such as alternate service. In addition to ideological reasons, there is a much simpler reason for supposing that conditional amnesty would mean little to American exiles in Canada. Having a way of life (with a circle of friends, a sense of place, and a job) here in Canada, many exiles could now benefit from amnesty only as it offers the possibility of visiting the U.S., and no one would perform alternate service merely for that right.

To add a personal note. In 1970 I was accepted for Peace Corps service, and was prepared to serve until the age of 26. In a presidential decree of April 1970, Richard Nixon said that deferment would no longer be granted, only "postponement of induction." I was willing to do *four* years of alternate service *then*. But that was four years ago. Most exiles, in their mid and late twenties, and even early thirties, are not likely at this stage to spend several years of their lives in some menial and punitive employment.

I could focused on the situation of American exiles in Canada, because that is what I am best acquainted with. A far more serious problem, however, is posed by the more than half a million Vietnam-era veterans with less-than-honorable discharges. I hesitate to estimate the social and human cost of their being unable to receive veterans' benefits or to hold good jobs.

Yours for universal and unconditional amnesty,

JOSEPH C. JONES.

W. MEDWAY, MASS.,
February 26, 1974.

Mr. WILLIAM DIXON,
Counsel, Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DIXON: We, as parents of Lawrence Graham Leigh, Jr. wish to express our feelings about amnesty for the boys who chose not to "serve" in the war, to kill, or be killed. If there was a choice to be made we feel that it should have been to help the under-developed Asian countries some other way, than the pretense of "fighting Communism."

We know now, the horror that our country has wrought in those Asian countries, and we would not wish the blame put on any man that our government sent over there. We note the pleas for help, for the tortured, wounded, maimed persons in Viet Nam alone. We are sick with the thought of our boy having to make the choice of staying out of the uniform, for three years, and then being murdered in that country which he would rather have done something else for.

We have all his letters in the less than four months that he spent there in Phu Bai and Dong Ha in 1967–68, as a Marine. He didn't like what he saw happening to those poor peasants in the fields. He didn't like what was happening to his "buddies," around him. His C.O. wrote that he was a "brave soldier," but his buddies wrote after his death, that Larry was still argumentative when he felt something was wrong around him.

We feel that it is "sick" to expect boys to get in that uniform, and suddenly, we are supposed to be "proud." There are so many more ways for a parent to be proud of their children than as military people.

There are so many more ways for us all to be "strong," so many more talents to be used, to help underdeveloped countries other than using the weapons our leaders choose.

Amnesty for those boys who exposed their feelings, and hearts and chose not to kill or be killed.

Our only peace of mind lies in knowing our Larry supposedly died almost instantly of his wounds. He did not linger, maimed somewhere.

Mr. and Mrs. LAWRENCE G. LEIGH.

STATEMENT FOR THE HOUSE JUDICIARY SUBCOMMITTEE HEARINGS ON AMNESTY SUBMITTED BY JIM MCCLELLAN, NATIONAL CAMPAIGN COORDINATOR FOR DR. BENJAMIN SPOCK'S 1972 PRESIDENTIAL CAMPAIGN AND FOR THE PEOPLE'S PARTY

Discussion of amnesty for those who refused to fight in Southeast Asia misses the point. They killed no one. In fact, they caused no harm at all. They did not abandon their families and homes in the face of an enemy attack. Their country was never in peril. They merely clung to the vision of what this country stands for, while their political leaders lost the vision completely. And their resistance to a government gone mad was purely passive. If there is to be a discussion of forgiveness, those who resisted the war and were forced into jail or exile as a result will have to be the forgivers, not the forgiven.

Most Americans by now agree that the war was a tragic mistake, that it should never have been started, that it was waged for reasons that have blemished this country's image perhaps irretrievably. Even those who still hold to the belief that American interference in the war was justifiable disagree with the manner in which it was conducted. And few can be pleased with the fruits of American intervention—a dictatorial regime in Saigon which suppresses the very freedoms American servicemen were told their sacrifices were helping to win for the Vietnamese people.

The longer the war dragged on, the more the American people grew weary and disillusioned by it. In the war's early years most Americans accepted the flimsy rationale for intervention offered by the Kennedy and Johnson Administrations, if not with enthusiasm, at least with a sense of duty. As time passed, however, those who were aware of what was really happening in Indochina raised growing doubts in the public mind. In the war's final years the established press came to realize it had been hoodwinked by government press releases, optimistic body counts, and smiling reassurances from Administration officials, and the American people began to get their first real look at the nauseous mess their government had involved them in: the destruction of Vietnamese villages, massive removal of civilians from their ancestral lands, invasions into neighboring neutral countries, search and destroy operations, wide use of napalm, computerized bombing from aircraft so high the civilian population seldom saw them, My Lai style massacres, herbicides and defoliates, the intentional bombing of dikes and Bach Mai hospital, destruction of rice crops, tyranny and corruption in Saigon. By the war's final days disenchantment was so pervasive the Nixon Administration was down to its last effective defense of continued intervention. Ironically, our objective in fighting the war was to win the release of those Americans captured while fighting it.

If the American people had known in 1960 what they know now, they would not have sanctioned the intervention in Vietnamese affairs. Those who refused to fight knew sooner than most citizens that the war was wrong. Should they be punished for arriving early at a position millions now hold?

Throughout the public debate over amnesty government officials have warned about the effect such an act might have on their ability to wage future wars. There can be little doubt that it would make it more difficult for the government to raise an army. But the difficulty of raising an army would offer a needed check on the proclivity of governments to go to war. Future administrations would be more reluctant to commit the nation to a war the American people neither supported nor fully understood. And after all, if people don't want a war the government which supposedly represents them has no business forcing them into it.

The resistance to the war in Indochina is a healthy sign. It shows that the democratic ideal is continuing to mature and develop among the American people. There was a time when the whole population would have dropped everything and marched off just because their leaders told them the national interest demanded it. Now, people are thinking for themselves, questioning what their elected officials say and do, and acting on their informed judgments. This kind of independent thinking should be encouraged, not punished, for it marks the eclipse of government by the people over government by the government.

Likewise, people should not feel animosity toward those who cannot support the course taken by their government. The right to obey conscience is the essence of freedom. It is a right that should be respected.

Many of our ancestors came to this country to escape tyranny and to avoid participating in wars they considered unjust. They came here because they know this was a place where people of conscience could find refuge.

To punish those who resisted the Indochina war or to force them into exile is to renounce an important part of the American heritage. Instead we should show that America is still a sanctuary for people of conscience.

Amnesty is for those who have committed crimes. It is something to be considered for those who waged war illegally, who lied to the American people and manipulated public opinion, and who ordered the unnecessary deaths of hundreds of thousands of Americans and Vietnamese, not for those who refused out of conscience to assist them. Those now serving prison terms for refusing to serve or refusing to fight should be released and they, along with the war resisters who have already completed sentences, should be compensated for the disruption of their lives. Those who went into hiding and those who left the country because of their opposition to the war should be unconditionally invited to return home.

DUNCANNON, PA., *March 13, 1974.*

Representative ROBERT W. KASTENMEIER,
House Judiciary Subcommittee on Civil Liberties and the Administration of Justice.

DEAR REPRESENTATIVE KASTENMIER: I wish to submit the following views for the record on the subject of amnesty. For the past three years I have been State Director of Selective Service for the Commonwealth of Pennsylvania and the youngest draft director in the nation. I have submitted my resignation to the President effective March 12, 1974.

The very title of your Subcommittee, Civil Liberties and the Administration of Justice, compels me to register the strongest possible opposition to unconditional amnesty for Selective Service violators.

I consider amnesty to be a question of law and I base my opposition on the principle that we are a nation of laws, not of men. The Selective Service laws were written by our elected officials and, of course, subject always to judicial review.

No young man in this nation was compelled to serve in the Armed Forces and subsequently no one was forced to go to Vietnam. All men ordered for induction had the alternative of refusing induction and presenting their defense in a court of law. Many of them did.

Even Ghandi and Thoreau recognized that those who would disobey the law must be willing to face the penalties, as a consequence of their action, and as a demonstration of their beliefs.

Those who refused induction or deserted military units and subsequently fled our country or otherwise made themselves unavailable to the due process of law, have faced neither their obligation to their country nor their obligation to their conscience.

When I was appointed Pennsylvania Director of Selective Service I stated that I was opposed to the draft; not as a means of procuring soldiers, but because of the many deferments that prevented an equitable application of the one law in our nation that could eventually result in the loss of life on earth for those who obeyed.

However one views conscription into the armed forces, the single concern of all citizens must be that each man be treated equally under this law.

We have never lived under a form of government whereby we did not have the power to change any law and even amend the oldest Constitution now existing in the world. Each of our communities may choose at the voting poll the person to represent their views in Washington.

There may never be a law written in the Congress that is not opposed by various of our neighbors for various of reasons. This is the exact purpose for which you are now listening to both sides of this issue.

As our elected representatives you must decide upon the final law in our behalf and as citizens we must be prepared to comply with the existing law and, if we so believe, work within the system to bring about any changes.

Therefore, I urge you to consider the amnesty issue as a matter of law and recognize that the inherent danger of allowing individuals to choose which of our laws they will adhere to is in direct proportion to our will to remain a free society.

Sincerely,

ROBERT D. FORD.

STATEMENT ON AMNESTY SUBMITTED BY CENTER OF CONCERN, WASHINGTON, D.C.

Two hundred years of American history demonstrate that the quest for justice is a constant and painful struggle. For freedom to fluorish and law and government to serve a pluralistic society, expediency, justice and understanding must be brought into balance within a dynamic tension. It comes as no surprise, therefore, that the current age should have to grapple with issues of justice. The Watergate

scandal, racial equality, and the problems arising from the energy crisis and the national economy are examples of such issues. Everywhere they are debated. All three branches of government are concerned with them.

Another question, however, looms large and substantially neglected: amnesty for the exiles, deserters, and prisoners of the Viet Nam War. The problem is part of the legacy of the longest war in American history and of a period of bitter internal dissent. It raises the same fundamental questions as other, more visible issues. It deals with people, with justice, with understanding and forgiveness; but it is in danger of being dropped or ignored amid the other concerns which press us. That would be unfortunate, for to drop it would be to add in the future another group of voices to those victims of the national will who already call us to account: Indians, minority groups, small and weak nations. If acted upon, it can become a powerful sign of our national determination to stand symbolically and really committed to the principles of liberty and justice upon which we all will ultimately rise or fall.

With this in mind, the Center of Concern strongly supports action for a full and unconditional amnesty for all exiles, deserters and political prisoners of the Vietnamese War period. The effort, it should be noted, is for amnesty, a confident nation's legal way of healing national wounds, when reconciliation offers greater promise than punishment. It offers reconciliation, avoiding moral judgments about the legal violation. By refusing to judge those who would return to our land or be freed from our prisons, it permits the emotions raised by the war to cool slowly and affords the opportunity for a constructive reunification of our fractured American society. Since amnesty sets up a neutral situation in the law, it gives breathing space to all of us who have strong opinions about the war. Without taking away the force of those persuasions, it provides the only practical way to look to the future by freeing us from the necessity of carrying forward, year after year, the pain of the war years.

As a means to unity in the interest of progress, amnesty will affect most directly several segments of American society. On one side stand those who have served in the military, supporting the war at great personal sacrifice. They ask appreciation for the course of action they have taken. Reintegration into civilian life has been frustrating for many of these men. The war's unpopularity and the national desire to forget have mitigated the traditional welcome afforded veterans by a grateful nation. Instead, they are having difficulty obtaining jobs, particularly where the arbitrary and questionable coding system for discharges has worked to their disadvantage. Having risked everything in the defense of national policies, they now are stunned to find that few seem to care. Amnesty and reconciliation, by their very nature, presuppose fair and just treatment for these men. On the other side stand those who have left military service without permission or have gone into exile and prison, also at a personal sacrifice. They ask for understanding and a chance to offer their talents in the nation's service.

Both sides ask vindication for the role they have played. But the war was controversial. Its rightness and necessity will be debated for years to come. Neither side, therefore, can expect more than mutual forgiveness and forgetting. For, when the claims of justice stand in opposition to each other, only the motivation of a greater good will lead the sides to lay aside their disagreement.

Who would be eligible for amnesty? The first group includes all those who fell victim to the fact that, despite the intent of the selective service laws and the efforts of administrators to enforce their spirit, the draft did not fall upon all Americans equally. Those with less education and lower economic status inevitably bore the brunt of the suffering and learned the historical truth that wars are often a poor man's fight. Often inexperienced, less educated, and inarticulate, they were drafted in the weakness which springs from lack of knowledge. Too late some found themselves caught up in a war in which they wanted no part and deliberately and conscientiously left the military service. Officially termed deserters, many of them hardly deserve the onerous connotations which the epithet carries: cowardice, irresponsibility, disloyalty. For many of them, it was a free and courageous act, performed from conscientious conviction at a high personal cost. Who will prolong the bitterness and skepticism among these little people by pointing the accusing finger at them? Have they done a greater wrong than the injustice which society imposed upon them in the first place?

A second group of the war's victims are those who are now in exile or otherwise being punished for dissenting from the war before the selective service legislation was changed midway through the war.

They suffer from the effects of legislation which has subsequently been altered. Their crime, it seems, is not their personal beliefs and the action which they took

upon them, but the date of their birth and draft notice. Who, now that the war is ended, will stand between them and their free re-entry into a society which has already conceded the point for which they have fought and suffered?

The third group which would be eligible for an unconditional amnesty are those who accepted prison or exile on account of their conscientious opposition to this particular war. No one denies that the morality of the Viet Nam War was questionable. Division over it racked American society for years and created dissonances which still echo to the far corners of the land. The rhetoric of the truce has not quieted the mixed judgments and disagreements. Yet, in the prosecution of the war, only male dissenters who fell within a certain age span were forced to chose penalties as their means of reacting. Many chose them freely and painfully and are still paying the price. It amounts to a perpetuation of the internal conflict, this prolongation of the punishment of the segment of society which, necessarily, voted against the war with its feet. Who among us can afford this self-indulgent bitterness which continues the divisiveness? Depending on the point of view, amnesty for these men is a matter of justice or forgiveness. Either way, it allows the disagreements of the past to drop away like stones into the water, rather than forcing us to bear their weight in our society unnecessarily for years to come.

The last group to benefit from amnesty would be those who refused to serve out of a personal sense of fear. This is the most difficult group of all to deal withl individual motivation is impossible to determine, and the idea of being mercifu: to "cowards" is repugnant to most people. Yet this group of people touches us at the very heart of our social existence. Precisely because motivation cannot be determined, or the amount of fear measured in a balance against the proportion of conscientious dissent, it prevents us from posing as each other's judges. To that extent, we are called upon to forgive what is necessary and to work together for the greater good. Forgiveness, after all, is the *sine qua non* of every effective life and every vibrant society. For which of us can stand before his peers as a just man, and what society enjoys a history free of injury to people within and outside its boundaries? In the face of an uncertain future, the carrying of grudges and indulgence in self-righteousness are luxuries which the United States cannot afford. Amnesty, in this case, is a matter of forgiveness—an act both generous and undertaken for the common good.

What is the future of amnesty? The President has already stated his strong opposition to any grant of amnesty during his administration. We believe that his judgment is mistaken and unfortunate. Under the circumstances we look to the Congress to assume the leadership in this neglected but vital area. It is a matter of justice, of forgiveness, of forgetting, of common sense. Challenged by their leaders to respond generously in this situation, we believe that most Americans will respond as favorably as they always have. Beset on all sides by crisis in government and national disunity, confronted with monumental and unprecedented problems, the time is opportune for America to lay aside her bitterness and give up the preoccupation with the wounds of the past. Amnesty can free us of some of these burdens and enable more of us to work together for the common good. That is our best hope for the future, and that, we firmly believe, is the best affirmation of the ideals which two hundred years ago first beckoned the country into existence.

AIR FORCE SERGEANTS ASSOCIATION,
Washington, D.C., March 13, 1974.

Mr. ROBERT F. KASTENMEIER,
Chairman, House Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: On behalf of the thousands of enlisted men and women of our association, it is essential to forward to you and the other distinguished members of your committee, our position on the very controversial and emotional issue "Amnesty".

Enclosed is a copy of the Congressional Record containing the Honorable F. Edward Hebert's statement on the floor of the House of Representatives regarding our resolution on "Amnesty".

From time immemorial, Americans have had to first fight to win their freedom in this land and then travel to foreign lands to help preserve that freedom. We could all philosophy as to the prudence of such action, yet in order for all people to live in peace and enjoy certain freedoms, we often utilize the following: "For

every right—there is a corresponding responsibility; for every privilege—there is a corresponding obligation." We deem these statements to be the basis for our stand on the issue of "Amnesty".

We would ask that this letter, along with the copy extracted from the Congressional Record of January 31, 1973, be entered into the official record of hearings on "Amnesty".

Your response to this request will be deeply appreciated by all members of our association who have faithfully served this great nation and those who are currently serving in our United States Air Force.

Yours in dedication and service,

DONALD L. HARLOW, CMSAF (Ret.),
Director of Legislation.

Enclosure: Extract of Congressional Record.

[From the Congressional Record, Feb. 1, 1973]

AIR FORCE SERGEANTS ASSOCIATION OPPOSES GENERAL AMNESTY—ADDRESS OF HON. F. EDWARD HÉBERT, OF LOUISIANA, IN THE HOUSE OF REPRESENTATIVES, WEDNESDAY, JANUARY 31, 1973

Mr. HÉBERT. Mr. Speaker, I take this occasion to bring to the attention of the House a resolution adopted by the delegates at the most recent convention of the Air Force Sergeants Association held in Sacramento, Calif., this past fall.

The resolution concerns the question of granting amnesty to draft dodgers and deserters who have fled the country to avoid serving in the Armed Forces during the Vietnam war. Because it states the case against a general amnesty so well and because it is so timely in its message on the subject, I am going to ask that the resolution be printed in the RECORD in its entirety, so that all Members of Congress will have an opportunity to read it:

OPPOSES GENERAL AMNESTY

Whereas, approximately 55,000 Americans have died from all causes during the course of the war in Indochina and scores of thousands have been wounded, many seriously; and,

Whereas, over 1,600 Americans are either prisoners or war or are unaccounted for by the enemy are still carried as missing in action; and,

Whereas, the President of the United States has stated that he would not grant any form of "Amnesty" while American Servicemen were fighting in Vietnam nor while prisoners of war were being held in North Vietnam; and,

Whereas, nearly 5,400 Americans are, as members of the immediate families of our POW/MIA's, tragically touched by the inhumanness of our Communist foes;

Be it resolved: the AFSA recommends that no form of general or selective amnesty be granted to all or any of the draft dodgers or deserters until the U.S. Combat role in Indochina has drawn completely to a close, and our prisoners have been returned to our shores, with a valid accounting of our missing in action; and,

Be it further resolved, that when the foregoing conditions have been fully met, then and only then, should a deliberate case by case review be undertaken by those who, having turned their backs on their country in her hour of need, now seek the full rights of citizenship when boastfully they chose to evade its accompanying responsibilities.

[From the Miami News, Mar. 6, 1974]

CONGRESS SHOULD OFFER AMNESTY

Members of the House Judiciary Committee will take time off from the impeachment proceedings to begin hearings tomorrow on granting amnesty to Vietnam war draft resisters and deserters.

The hearings mark the beginning of a serious national debate on the fate of an estimated 70,000 young men who went to jail, fled the country or went underground rather than participate in the now-discredited war.

Deserters are a separate problem because they accepted the military role and then took off. Their cases deserve individual, but charitable, evaluation. Those who refused to serve at all should have blanket amnesty.

The President, whose administration needs more than a little amnesty for itself, consistently has opposed the idea of letting these other prisoners of war off with less than the full punishment provided by World War II vintage laws.

President Nixon ordered special treatment for Lt. William Calley and says he doesn't want to hit convicted felon Spiro Agnew "while he's down," but is more than willing to impose jail sentences on men who have already lost years of their lives.

The crooked former vice president and the convicted murderer of 22 civilians walk free on American streets while 70,000 earnest young men suffer.

These men harmed no one, cheated no one and violated no one's civil rights. Their only crime is that they dared to say "No" to an insane policy that divided the nation almost to the point of destruction.

Resolution on Amnesty From Canadian Council of Churches

The Executive Committee of the Canadian Council of Churches met in Toronto, March 21, 1972. The Committee passed the following resolution and directed that it be released to the press:

"(*a*) That the Canadian Counil of Churches fully recognizes that the granting of amnesty by the United States Government to its citizens who have gone abroad in opposition to the Southeast Asia War is a matter which must finally be decided solely within the United States.

"(*b*) That the Canadian Council of Churches, however, having assumed a ministry to war resisters who have immigrated to Canada, has a deep pastoral concern for these young men, and in particular, a concern that their civil rights as U.S. citizens be fully protected and that maximum possible choices be open to them in planning their futures.

"(*c*) That, therfore, the Canadian Council of Churches expresses the hope that the people and government of the United States of America will provide a general, non-punitive amnesty to young Americans in Canada who, in resistance to the Southeast Asia War, have broken civil or military law.

"(*d*) That, furthermore, we hope that many of these young Americans, to whom our borders have been properly open, will choose to make their future in Canada when the day arrives when they may return to the United States without jeopardy."

Statement of John W. Piercey for the Subcommittee on Amnesty of the House Judiciary Committee

My name is John W. Piercey. I live in Vienna, Virginia. I am a retired Foreign Service Officer. In 1966–67 I was a member of the Public Affairs Sub-Committee of the Viet-Nam Task Force in the State Department.

My son, Bruce, is a "deserter". He departed Fort Leonard Wood early in 1968, left the country and has resided in Norway since that time. Bruce's act was totally an individual decision—made against the advice of his parents. Bruce has joined no groups, has never denounced his country, its leaders, its policies nor has he ever praised our enemies or hoped for the defeat of his country or its allies. Bruce had a hard time getting a job initially but soon was fully self-supporting doing industrial research, then medical research as part of internationally-recognized cancer research team (he is a cytologist) where he was at first a volunteer and then a salaried member and for the last year a computer technician. He married the daughter of a UN official (a Norwegian) and has a two year old daughter. The Norwegian Government has issued him working papers and a passport. He has expressed no desire to return to the United States but of course woold like to have his name cleared and to have the right to visit, or if he should decided eventually to do so, return to the U.S. He has never asked me to intercede for him in any way. He has remained from the beginning a close and valued member of our large family and we have visited a number of times in Canada and Europe.

I make this statement because some people, including some congressmen, have a stereotyped view of "the deserter" and place him apart from others who refused to participate in the war—such as draft evaders (and of course the much larger number who evaded in legal ways—CO's those who hid out in college, those who feigned illness or used other devious ways to avoid service.)

Bruce did not intend to avoid his military service. He doubted the value of the war, deplored its horrors and being a kind and gentle person found participation in it distasteful. Yet, probably in part persuaded by my own views, decided not to continue into graduate school with his medical studies and became subject to the draft in the fall of 1967. He hoped, indeed, that his doubts about the war would be dispelled by the training he would receive.

The reality was that the three months of basic training distressed, discouraged and repelled him to the point that he felt psychologically unable to stay with it. Maybe it was his gentle nature, his innate dignity, his sense of decency and fairplay that kept him from accepting as training what some military men call necessary "harassment". Maybe Bruce is a person who is just incompatible with military methods. I think that is only part true. Bruce is no softie, no sissy. He is tough, wiry—6 foot 3 inches tall (and wrote me that in the toughest field training only 3 of the 60 in his group usually finished.) In other words it wasn't the physical—it was the psychological atmosphere which repelled him.

Bruce found the discipline childish and petty. He arrived at the camp sick from a cold and later had the flu but refused to ask for sick leave or hospitalization because all who did were ridiculed, threatened and insulted for malingering (perhaps some were). After hours in the field in the coldest winter for years, and after exhaustion they were denied the right to sit on their beds and forced to sit on the cement floor. If caught reading a newspaper, they were punished or penalized. Contests were held, then the results were doctored. Funds were collected for causes, and then the funds used to buy beer. Threats made but often not carried out. And so on.

One series of incidents on one particular day illustrate why my son found the "training" disgusting. One morning when they were to go out for their 5 a.m. field training, he found that someone had stolen his cap. Suffering from a cold and a severe headache, he as a last resort put on a baseball cap. This enraged the officers two of whom struck him on the head with their hands. When a third started to do so, Bruce fended him off with a blow of the butt of his gun. That evening his squad leader made a talk to the group—complimenting some criticizing others. He walked over to Bruce and proceeded to twist his nose. Bruce told me that he had seen others cringe under this treatment and decided it was not going to happen to him. He slapped away the man's hand. Thereupon the group was dismissed and Bruce ordered into the back room. The squad leader, who was drunk, then pounced on Bruce to give him a beating. He swung Bruce into the wall and cut a gash in his head. (When he came home for Christmas, I took a picture of Bruce playing the piano and this gash is clearly visible on the side.) Bruce decided to defend himself. He wrestled the squad leader to the floor and simply sat on him for about 20 minutes, when, humiliated, he begged Bruce to let him go.

Bruce was so weak from flue and cold that when the Christmas leave came, he managed only to get up to Lawrence, Kansas and then stayed in bed for four days before he had the strength to come home to Virginia. He told me that he began to feel like a human being again when he opened the door. As distressed as he was by these experiences, he was determined to see it through and even returned a day or so early to camp. But in the next two or three weeks he had made his decision. He just didn't want to make over his personality to fit into a system he found detestable, to be under the command of people he found contemptible. I think he was so depressed and disturbed by these experiences that he felt he would lose his sanity if he stayed. I asked him why he did not make charges against those who had used violence on him. He responded that he really did not want to hurt the squad leader who was already in trouble and who badly needed a promotion. It just wasn't in his character to try to accuse people and anyway it appeared it was all part of the accepted system at the camp. (I wrote the CO about these events later and in reply an officer showed some alarm and said such things were "not condoned".)

In short, a young man who entered the service with good intentions was simply driven away by stupid, perhaps illegal, training methods. Here is a case of a young man with exemplary character, a fine school record, a fine record of public service, universally respected by his friends and associates. I don't think he "deserted"—I think the military deserted him. He even told me that he had hoped to be fully convinced and enthused about the war effort.

Neither Bruce or his family have suffered greatly over this. He has adjusted and we have adjusted. But the record ought to be cleared and such young men, if they wish, should have an opportunity to live in or visit the United States.

Bruce would not think of returning if it meant trials or possible imprisonment. Why should he?

My point in writing this statement is to show that violations of the military rules are not necessarily the fault, or only the fault, of those who left.

I would suggest that in such cases these young men be permitted to make depositions abroad which might clear them—or be permitted to return for hearings and if they do not want to accept the result be permitted to go into exile

again. This latter is suggested in the very intelligent article by Robert Delaney in the September 1, 1973 issue of AMERICA.

Finally, I would argue that this country ought to be very lenient of violators for they refused to participate in a war that even the majority of the Foreign Relations Committee of the U.S. Senate repeatedly denounced (as well as swarms of intellectuals, ministers, professors etc.) Anything less than amnesty under these conditions seems to me pure hypocrisy.

STATEMENT OF GUNNARD LANDERS, FALL CREEK, WIS., TO THE CONGRESSIONAL SUBCOMMITTEE ON AMNESTY

First some credentials: I served in Vietnam 1968–69 as a rifle platoon leader in a relatively secure area. In six months field duty I only had fifteen men wounded and one killed, out of an average platoon strength of 24 men.

My actions and the actions of every American who served in Veitnam were either honorable on the basis of their own merit, or they were a sham in that we took any action at all. Irregardless of the viewpoint, to show compassion for deserters and draft evaders will not and cannot make our pervious actions honorable or dishonorable. And that goes for the dead soldiers also.

If any citizen feels we will be dishonoring those who died by granting amnesty then the acts of those who died could not have been honorable in the first place.

Exile is spiritual castration—Solzhenitsyn.

Should deserters and evaders perform an act of contrition for displaying morale courage, for speaking up for human life, for failing to respond to a war that was never quite declared, that for years was based upon a fabricated incident in which the most dangerous enemy act was one of our own destroyers almost opening fire on another destroyer? No free amnesty? Those who fled have not suffered? Have they been able to begin careers, be with their families? When does the self-delusionment of this game end?

The Vietnamese, North and South, have suffered over 4 million casualties. And the war still goes on. What has anyone gained?

Freedom? They never knew what it was. They still don't. Freedom from communism? That's a big, powerful, hate producing word. It means just as much as freedom to the average Vietnamese. It's all crap.

Some people have testified we don't want to set a precedent for the next war by granting amnesty. Laws are made to be obeyed or else we will have lawlessness.

The constitution grants congress, and only congress, the right to declare war. The congress shirks its duty, fails to properly investigate and understand the Gulf of Tonkin incident (the two destroyers for you unenlightened) and in the secret heat of patriotic fervor passes their duty, indeed their constitutional responsibility to the President, who further makes excuses with the law to conduct this undeclared war. Talk about setting a precedent.

A body from the hinterlands sees a great deal of destruction and killing going on, ostensibly to stop the communists (that scare word again) and give the poor souls of Vietnam, (of whom the average American still doesn't know anything about and doesn't want to know anything about) a chance at freedom, something they have no history of, and were expected to learn about during the war. The law says go and kill. Some follow, (Blindly?) others resist the law, some tacitly, through loopholes, knowing people, money, get married, and drop a kid, etc. (you'd be surprised). Others want to stand up, speak their mind. They take a more obvious route, they openly break the law. They must pay. Anyone genius enough to discover a loophole is free. You see it doesn't matter if justice is served or not, all we want is the appearance of obeying the law. Hence our illusions of being a great and righteous people can live. Punish the evaders and deserters. The prior violations of their basic constitutional right to have their congressman vote for or against the war means nothing. They broke the law.

But to get back to the point of setting a precedent. Does not the fact that the congress is willing to shirk its duty, that the President is allowed to circumvent the constitution and send any of us off to war, in effect without our sayso. Does that not constitute a precedent for future administrations to follow?

But of course fighting that is a stormy course, the tough course calling for men of courage, men of leadership. I'm confident it will remain untouched until at some later year it is much too late. Tis much easier to talk about a bunch of crummy draft dodgers, to worry about the possibilities of their evading the draft or protesting when we plunge into our next undeclared war.

Incidently, I am aware of the war powers bill, which has clearly legalized the President's right to begin a 90 day war. Which means of course that once we start something our honor will again be at stake, patriotism will rule, rational decision making will not count.

I'd talk about the hundreds of thousands of dead in Vietnam, but I've found out that nobody really gives a damn. The point came many years ago when our honor, not necessarily the real thing, just the pretense of honor, became much more important than human lives. A blind following seemed better than harsh, painful thought, than ever admitting to a wrong, or more importantly, by our top "leaders", ever imagining they could be in error.

How sad a person, a country, that cannot admit a wrong. How sad a person, a country, especially a rich one, that continually rants about its greatness rather than to demonstrate its humility. It's easy to be ashamed.

I'm not proud of what we did in Vietnam. I'd have to purge my mind of all that I saw and learned, I'd have to again strap on the blinders of patriotism in order to say any of what we did was truly right.

But the saddest thing of all is we are that much the worse for what happened. We didn't learn. We just put it behind us, errors and all. The few men of courage were pushed to the wayside. Our constitutional rights were stolen and men of congress turned their heads, (in shame I hope)

Calley is free, a hero to some. And over three hundred villagers at My Lai are dead. What's the lesson here? Should have I, a platoon leader like Calley, conducted myself the same?

We have an opportunity to show compassion with the draft evaders, people who wanted to see the killing stop, who wanted to be involved in our government, who wanted the precepts of our constitution upheld.

Do we have the leaders who will stand up? Will we act?

I doubt it. After all the resisters are only human beings. Who cares?

STATEMENT ON AMNESTY BY CHARLES T. SMIT, COOK COUNTY JAIL, CHICAGO, ILL.

Amnesty, as defined by the New Merriam-Webster Pocket Dictionary, is "an act granting a pardon to a group of individuals." A rough beginning, to be sure, but one we can use for our purposes as a basic point to build from. First, I notice that it is not an act of any particular person or persons, therefore, anyone has the power to grant amnesty to anyone else. This is a fundamental assumption upon which I will base all my discussion. Now, one must ask, if I were to grant amnesty, who would I grant it to and for what actions? Further clarity on this is gained by consulting the same dictionary for a definition of pardon. It says a pardon is "excuse of an offense without penalty: Forgiveness; especially: an official release from legal punishment." This gives us more clarity, for now we have need of someone in office with the power to dispense with legal punishments. Of course, I immediately think of a governor or a president, but I don't wish to narrow too rapidly the possible associations I can relate this power to. A broader approach to amnesty would, therefore, seek a broad interpretation of the word "official". In a democratic context, the broadest level of officialdom is the voting public, the citizen. Let us assume, therefore, that this is the official we seek—the sovereign people of this nation. Now, who is most in need of amnesty from the people of this country?

My contention is that the people who most urgently require an amnesty from the people are those elected officials who secretly engineered public opinion in such a way as to further a conspiracy to bomb, kidnap, rob and murder the people of these United States of America. Of those now in office, this would include Mr. Nixon, his cabinet members and advisers during the period of direct U.S. involvement in the Indochina conflict, those members of the House of Representatives and the Senate who voted in approval of the Department of Defense budgets during that conflict, and those members of the Federal bench who used their position to repressively prosecute the natural leadership which developed within the rank and file citizens of this nation. Therefore, as primary people in need of amnesty, I would cite Mr. Nixon, Mr. Agnew, Mr. Laird, Mr. Kissinger, Mr. Colby, Mr. Humphrey, Mr. McNamara, Mr. Rogers, Mr. Mitchell, Mr. Rusk, Mr. Helms, Mr. Schlesinger, and other top level administrators including the Joint Chiefs of Staff, all Senators and Representatives who voted in favor of the Gulf of Tonkin resolution and subsequent D.O.D. budgets, all members of the Federal bench who convicted war resisters, all presiding officers at courts martial in cases stemming from war protests among members of the armed forces, etc.

It is my assertion that all of these people are guilty of war crimes in time of undeclared and unconstitutional war in South East Asia. It would not be stretching the truth to assert that such a conspiracy amounts to high treason, therefore, amnesty should most certainly be desired by these war criminals. In addition to these officials, of course, one would have to include all corporation executives and employees in "Defense" contracting industry, all troops, marshalls, military police, and other military and civilian enforcement agencies who carried out the commands of their superiors when war crimes and/or repression of the peace movement was involved. Finally, after so many years of deceptive bombing, announced invasions after the fact, thousands upon thousands of casualties, the American people have begun to use our power in ways that have directly and concretely impaired this juggernaut's war-making potential. We must now press even further, and grant these war criminals amnesty only under specific conditions:

(1) That all U.S. troops cease immediately all participation in any hostilities whatsoever. This includes all air force and naval aviators involved in bombing missions anywhere on the face of the earth; it includes all combat advisors still participating in military maneuvers in the field, be it Indochina, the Middle East, the Phillipines, Brazil, Angola, Mozambique, Ethiopia, or where ever they may be.

(2) Next we planetary people demand a unilateral withdrawal of all U.S. troops from foreign soil, and,

(3) a halt to any and all arms sales by the U.S. government abroad.

(4) We further insist on the progressive disarmament of all nuclear weaponry and

(5) the termination of all research and development of new weaponry, whatever its nature.

(6) Finally, we require the immediate cessation of any and all "Defense" contracting production, and

(7) the conversion of these facilities to peacetime production as rapidly as humanly possible.

If the above stipulations are met, we will be satisfied in the good faith and peaceful intentions of the above mentioned war criminal conspirators, and will organize a general amnesty to secure the lives of these mass murderers from the hostile rage of an awakened people. Without such essentially peaceful indications of sincere change and rehabilitation, however, these above named war criminals can only expect an awakened people to revolt and to devote our complete energies to the forced disarmament of said violent parties, for their own good and the good of the world's people. Such is the amnesty we, the people, now offer.

May Peace Consume You.

STATEMENT ON AMNESTY BY THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, WASHINGTON, D.C.

Genuine reconciliation demands that general unconditional amnesty be granted to all who are in legal jeopardy because of the war in Indochina. The only exception would be for those who have committed acts of violence against persons, and even these person's cases should be reviewed individually to determine if amnesty is appropriate. Such general amnesty would include:

(*a*) Draft resisters and deserters who have exiled themselves to other countries.

(*b*) Those currently in prison or military stockades, those on probation, those who have served their sentences, those who are subject to prosecution for violation of the draft or military laws.

(*c*) Draft resisters and deserters who have gone underground to avoid prosecution.

(*d*) Viet Nam era veterans with less-than-honorable discharges.

(*e*) Those who have committed civilian acts of resistance to the war or are being prosecuted upon allegations of the same.

Approved by the United States Section of the Women's International League for Peace and Freedom, in Biennial Meeting in Boston, Mass., June 14–18, 1973.

STATEMENT OF THE BROOKLYN DIOCESAN COMMISSION FOR WORLD JUSTICE AND PEACE, ADOPTED MAY 24, 1973

As we set our sights on peace, the tragedy of a war that divided Americans for years would be magnified if it is allowed to remain a source of division among us.

The same bitterness that marked the conduct of the war now characterizes the discussion of amnesty for those who chose not to participate in it or who actively opposed official policy. For some, the refusal to serve was self-serving. Others rejected military service because they regarded U.S. participation in the Vietnam War as wrong both for themselves and for their country. Because of an affirmative act of conscience, they live in the United States as fugitives from the law or they are self-exiled from family and community. Many who had accepted military service had no option but to break ranks to resist the orders of superior officers. They too are paying a high price for their consciences.

The time has come to consider unconditional amnesty for all those now in legal jeopardy or otherwise prejudiced whose protest against participation was motivated by sincere conscience. After a long and divisive war, we feel that the national interest would be best served by policies of reconciliation. We do not accept the notion that reconciliation now dishonors those who fought in Vietnam. Our dead who fought in good conscience are not honored by retribution against those who in good conscience chose not to fight. In addition, we recognize the sacred responsibility of each person to follow his conscience even in the face of conflicting laws. We recognize this duty as did the U.S. Bishops in their statement of 1968 (repeated in 1971) defining the moral right of selective conscientious objection and urging amnesty for those who had exercised it. Moreover, we would like to associate ourselves with the sentiments of Boston's Cardinal Cushing as expressed in his 1970 Easter message, the last before his death:

"Would it be too much to suggest that we empty our jails of all the protesters—the guilty and the innocent—without judging them, call back over the border and around the world the young men who are called deserters, drop the cases that are still awaiting judgment on our college youth? Could we not do all this in the name of life, and with life, hope. . . ?"

After the Civil War, President Lincoln begged for a policy of reconciliation. He did not receive it and as a consequence we still suffer the divisiveness of the aftermath of that war. Let us not pay the price again for failing to heal the nation's wounds. More importantly, let us not allow the political implications of this issue to obscure the basic moral issue to which the U.S. Bishops called attention. And, as Christians, the love of Christ demands that we fulfill His commandments: to reconcile man to God and man to man.

THE AMNESTY QUESTION: A REFLECTION—STATEMENT OF COMMISSION FOR WORLD JUSTICE AND PEACE, DIOCESE OF BROOKLYN, N.Y.

After the long and divisive Vietnam war, it seems strange that few political figures are taking any concrete actions to heal the bitterness caused by it. Perhaps they believe that time is the best healer and that more of it need elapse before issues like amnesty are addressed in any systematic way.

The nation's religious leaders, however, have taken a definitive stand on the issue and interestingly, they line up almost overwhelmingly on the "pro" side. In the course of the last several years, virtually every major religious group has issued a declaration calling for amnesty for those in legal jeopardy whose protest against participation in the Vietnam war was motivated by conscience.

The National Conference of Catholic Bishops, for example in November of 1971, expressed "pastoral concern" for those who in conscience resisted the war. "They too," the Bishops argued, "must be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation."

For some, the refusal to serve could have been self-serving. But others certainly rejected military service because they regarded participation in the Vietnam War as wrong both for themselves and for their country. Because of an affirmative act of conscience, they continue to live either in the United States as fugitives from the law or elsewhere in exile from family and community. Many who had accepted military service came to believe they had no option but to break ranks to resist the orders of superior officers. They too are paying a high price for their consciences.

Those who argue for amnesty believe that the war itself was a national mistake and that many young people who refused induction, or who later deserted, recognized it as such long before the rest of the nation. This recognition, they say, contributed ultimately to a national policy of disengagement. Moreover, they argue that the essence of democracy is the right to dissent and that after a long and divisive war the nation would be best served by a policy of reconciliation.

Those who oppose amnesty believe that those who broke the law must pay the price. They argue that citizens cannot pick and choose those laws they will obey and ignore those they find morally objectionable. They ask: what happens to a society of law under such circumstances? This, we note, is precisely the question put to Bishop John Wesley Lord of the United Methodist Church and Bishop Bernard Flanagan of the Diocese of Worcester, Massachusetts, at Senate hearings in early 1972. Bishop Flanagan answered this way:

"* * * in the ultimate, a man's conscience has to be the criterion by which he makes his moral judgments. He is obliged, of course, to form that conscience on the basis of reflection, consideration of all the various viewpoints, the issues involved, but when he does come to that decision even though it might be against the civil law at the time, then it seems to be that we as Christians—and I'm speaking now of the Gospel—must accept his decision as one which is correct for him." Bishop Lord followed: "* * * the only way we get good laws or better laws is in determining what laws no longer serve a good and useful purpose, and must be changed, and the only way to change some of those laws is to stand in defiance of those laws, taking the penalty that such disobedience requires at the moment, but with the hope that new laws will become a part of the government * * * Law is constantly in the process of change, and without this priceless ingredient of conscience and determination to examine law, to reexamine it, to find out why it is, we would be unable to establish a new and more satisfactory code."

Another argument against amnesty is that reconciliation now dishonors those who fought in Vietnam. But, we must also ask ourselves, can the dead speak, and advise us? Does anyone presume to speak for them? Are the dead who fought in good conscience honored by retribution against those who in equally good conscience chose not to fight.

In assessing the arguments on both sides of the issue, it is important to keep in mind just what amnesty is and what it is not. The root meaning of the word is to forgive—the law would decline to indict. Amnesty does not involve forgiving, but simply getting on with the business of life, with the reconstruction of the spirit of the nation with all participating—not just those who were able to agree with the national leadership or those whose opposition cost them nothing. For many, including the late Cardinal Cushing, the issue was a simple one. "Would it be too much to suggest" he asked in his 1970 Easter message, "that we empty our jails of all the protesters—the guilty and the innocent—without judging them, call back over the border and around the world the young men who are called deserters, drop the cases that are still awaiting judgment on our college youth? . . . Could we not do all this in the name of life, and with life, hope. . . ?"

After the Civil War, President Lincoln begged for a policy of reconciliation. He did not receive it and as a consequence we as a nation still suffer the divisiveness of the aftermath of that war. We should really ask now if we wish to pay the price again for failing to heal the nation's wounds. More importantly, it seems clear that we ought not to allow the political implications of this issue to obscure the basic moral issue of the right of conscience to which the U.S. Bishops and other religious leaders have called attention.

MADISON, WIS., *March 6, 1974.*

Hon. ROBERT KASTENMEIER,
House of Representatives,
Washington, D.C.

DEAR MR. KASTENMEIER: I wish to submit the following statement to the committee hearing on Amnesty.

A Universal and unconditional amnesty is urgently required for all U.S. citizens who have been or are now subject to penalty for actions in violation of laws related to the conduct of U.S. military pursuits in Southeast Asia. The U.S. involvement in Southeast Asia has raised basic questions of justice and morality for the American people, to such a extent that no political or legal resolution of these questions seems possible. Indeed, the very idea of our constitutional government is threatened by the present struggle between the legislative and executive branches of our government. The impending possibility of impeachment of the president is feared by many, since the process itself suggests a fundamental weakness in our form of government. How could so many people be deceived or mistaken in their selection of the president. Impeachment is a political act, expressive of a fundamental error of judgment in the people—the honest failure of a people to secure honest and integral leadership.

Beginning with the early 1950's the American character has been victimized by an hysterical reaction to Communism. Anti-communism has become a surrogate for patriotism and reactionary policies have replaced the revolutionary spirit of our forebearers. No wonder that our present historical period is described variously as the age of alienation, with a credibility gap and a crisis of confidence. Without the trust and fidelity of its citizenry governments must rely on deception and coercion to appear to govern. Rhetoric replaces honest debate and cynicism becomes the philosophic temper of the times. When cynicism becomes the idealism of the young, we, the older generation have robbed them of their patrimony.

We must begin to engender a sense of hope for our future, away from the reactionary policies which created the debacle of Viet-Nam, and regain our historical sense of freedom, represented in our own revolution.

Amnesty is a political beginning of such hope. Universal and unconditional amnesty must be the character of that hope. We must not attempt to penalize those who resisted our collective madness, nor should we further penalize those who have already suffered imprisonment, exile or other loss of civil liberty. All records should be wiped clean, all citizen rights should be restored, all past, present and anticipated indictments should be expunged from legal record. Violations of Selective Service Laws, of IRS laws insofar as these are protests, less than honorable discharges from the armed services,—all should be covered under an amnesty.

The political significance of amnesty is that we are turning our faces to the future. We cannot ignore the past but we must legally forget our cynical need to avenge our past, for that is to perpetuate what is unbearable. 55,000 dead; many thousands more maimed in body and spirit; thousands in exile and underground; many in prisons—and billions of dollars of human energy wasted. And even more tragically, the cruel and inhuman wasting of the humanity of the VietNamese people.

There is no way humanly possible to administer a selective or conditional amnesty that would generate the sense of hope that we need as a people. How shall we measure the amount or degree of atonement or expiation of guilt required for the actions of our military in Southeast Asia? How many less than honorable discharges were caused by the physical and psychological inability of young men to cope with a war the American people could not understand? How would we select among them? What of the thousands of tax protestors who have gone unpenalized? Who shall administer their debt to society? What of the White House Staff and others in government who acted out of a sense of "National Security"? Surely they will be amnestied! Who would trust the politics of creating such a vast bureaucracy to administer a selective or conditional amnesty?

I ask you, ladies and gentlemen of the committee, to pursue the policy of universal and unconditional amnesty. It is a political act of hope for the future, in the conviction that anything less will perpetuate a past we cannot administer according to any humane sense of justice. Let us turn our faces to the future and restore to our young their proper patrimony—a sense of idealism in their fellowman

Respectfully submitted,

DANIEL J. GUILFOLL,
Professor of Philosophy.

AMNESTY AND RECONCILIATION COALITION OF WESTERN NEW YORK,
Kenmore, N.Y., March 11, 1974.

Mr. WILLIAM P. DIXON,
Counsel, Subcommittee on Courts, Civil Liberties and The Administration of Justice, Judiciary Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. DIXON: Your letter of March 7, 1974 to Mr. Kenneth E. Sherman of the Western New York Peace Center invited me to submit a written statement to the subcommittee investigating amnesty legislation. My statement is as follows:

As Chairman of the Amnesty and Reconciliation Coalition of Western New York, I urge the Congress to adopt a generous amnesty policy. ARC supports unconditional amnesty for draft resisters, deserters, and veterans with less-than-honorable discharges. We also endorse a clearance of the records for all who have suffered imprisonment because of their opposition to the Vietnam War.

The vast majority of Americans now consider the Vietnam War a tragic mistake. Many young men had to make their crucial decision on the war when some government and religious leaders were already condemning it, but before the nation as a whole repudiated it. To punish these men would only compound the tragedies of the Indochina conflict.

Conditional amnesty, as some propose, is not genuine amnesty. It is punishment, based on the presumption that the criminal action was not the war, but the refusal to participate in the war. War resisters have already endured the pains of exile, the stigma of prison, the anxieties of underground. They have suffered enough.

Amnesty for Vietnam war resisters is not a signal to future generations to refuse the legitimate defense of our nation. If anything, it is a signal to future presidents to think twice before plunging us into another Vietnam. It serves notice that future wars should be waged only with just cause and by declaration of the Congress as decreed by the Constitution.

The scars from Vietnam go far beyond the cemeteries of Indochina, the paraplegic wards of America and the enclaves of exiles in Canada. Almost half a million veterans have returned to civilian life under the heavy pall of less-than-honorable discharges. Many have served in the front line of service in Vietnam. But their discharges, lifetime sentences in effect, weigh heavily against them in the job market, and disqualify many for civil service and veterans' benefits. I urge our government to wipe clean the slate for these men.

There is nothing the Congress can do about most of the victims of the Vietnam War. You cannot restore life to the dead nor health to the disabled. But in the vast area under the amnesty question, you can restore legal and social health to hundreds of thousands scarred by the Vietnam tragedy.

The war was filled with cruel irony. Those who planned the war did not suffer. Those who suffered did not plan. Will we be remembered as the generation who readily forgave leaders who recklessly made war, but couldn't forgive young rebels who made peace?

In recent weeks, Americans of all persuasions have heralded the courageous rebellion of Russian author, Alexander Solzhenitsyn, against the arrogance of power wielded by the Soviet Union. To many citizens, our own government misused its military power in Vietnam. Are we to cheer rebels who challenge the arrogance of power in other countries while condemning rebels who challenged the abuse of power by our own government?

I hope the Congress will move decisively in the coming months to repair, in so far as it can, the ravages of war through a generous policy of amnesty.

Sincerely,

EDWARD CUDDY, *Chairman.*

STATEMENT OF NATIONAL COUNCIL FOR UNIVERSAL AND UNCONDITIONAL AMNESTY SUBMITTED BY MR. JEREL W. OLSEN, COORDINATOR

The National Council for Universal and Unconditional Amnesty (NCUUA) acts on behalf of sixty organizations actively working toward the achievement of a just amnesty. A list of affiliates and the NCUUA Statement of Purpose endorsed by each is provided in testimony of Mr. Henry Schwarzschild of the American Civil Liberties Union, Project on Amnesty. The present hearings have little direct testimony from those who would be affected by an amnesty. Several groups within NCUUA are composed of these individuals. We criticize the fact that they have not been requested to testify. We will advocate their views, as well as the views of other affiliates, herein.

This submission provides a cursory overview of the issue of amnesty. It briefly discusses the following points: amnesty in the larger context of the yet unended war in Southeast Asia; precedent for present-day amnesty measures; how many and what individuals would be affected; and an outline of what a just amnesty is. This submission leaves detailed discussion of these and other points to others who have submitted testimony. (Among this testimony are oral presentations by three members of the NCUUA National Steering Committee—Mr. Robert Musil, CCCO/An Agency for Military and Draft Counseling, Mr. Henry Schwarzschild, American Civil Liberties Union Project on Amnesty, and Ms. Trudi Young, Clergy and Laity Concerned—as well as Ms. Patricia Simon of the NCUUA affiliate. Gold Star Parents for Amnesty.)

Perhaps the most emotional question for the American people since the return of the POW's following United States troop involvement in South Vietnam, amnesty affects hundreds of thousands of Americans—some say more than one million. Yet the war goes on even today, supported by American dollars, equipment, bodies and minds. The war is very much alive for more than 200,000 political prisoners still incarcerated in South Vietnam, in violation of the peace accords. They must be released. Aid to the Thieu dictatorship must be stopped. Free elections must be held. But the war is still very real to Americans as well. It is

real for the veteran who must live with nightmares of atrocities experienced while fighting in an unwanted war thousands of miles from home. It is real for the returned POW, perhaps imprisoned for years. And it is real for the individual in need of amnesty.

The current President has asserted that "Amnesty means forgiveness." Nothing could be further from the truth—unless the reference were to be directed toward the real criminals in what has been characterized by an American exile in British Columbia as: "a war that has never been declared, that has failed to comply with the Geneva conventions, that has destroyed and obliterated a peasant society, (and) that has helped in turn to create further ecological wrath on a global scale."

It is a war unjustifiable by American or international law, unjustifiable by the will of the American people. If we speak of war criminals, we must speak of the executives and stockholders who encouraged and profited from the war, of war hawks who blindly led us along a totally reprehensible path.

But while amnesty cannot be taken to mean forgiveness when we speak of those who opposed an immoral war, neither should we accept the literal translation of its Greek root, amnestia, which is "not remembering," or "forgetting." The only thing to be forgotten here is the punishment of those described during 1972 congressional hearings by the chairman of the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, Senator Edward Kennedy, as "those who see the things we now see, but saw them sooner and did the only thing they could." On the other hand, we must remember, not forget, the lessons of amnesty. That is another way of saying we must remember the lessons of the war. It is a war that has tolled tremendous costs upon America and its people, nationally and internationally. We must remember the lessons of that war, so as not to repeat its mistakes. Amnesty logically follows a discussion of the rightness and wrongness of that war, as Senator Kennedy accurately observed. In retrospect, the discussion of the rightness and wrongness of the Indochina War is settled. The futility and destructiveness of a decade of struggle and 55,000 American lives—not to mention untold numbers of lives from other nations—is unchallenged.

Amnesty has precedent, despite a presidential press conference statement to the contrary on 2 March of last year: "If, at the end of the war, we broke every precedent that this country has had, this will be the first time that amnesty was provided * * * . If we did that, we could not have a viable force in the future."

This statement is blatantly wrong on both of its counts. Article II, section 2 of the Constitution, providing for "Reprieves and Pardons for Offenses against the United States—except in the case of Impeachment," has been invoked thirty times by Chief Executives. It first was used by President Washington as early as 1795 following the Whiskey Rebellion. An interesting twist was provided by President Jackson subsequent to the War of 1812, when the above provision was conditioned upon the stipulation that amnestied individuals never again enlist into the military. It is unlikely that many present-day amnesty recipients would find much difficulty with such a stipulation!

In addition to these executive amnesties, seven acts of Congress may be placed under the category of amnesty, including the Universal Amnesty Act of 1898 which provided unconditional amnesty for all remaining rebels of the Civil War. We might even stretch the definition of amnesty for the moment and point to our aid and "amnesty," as it were, to enemies after every war in our history. With a vast amnesty tradition behind us, can we not make peace with our own youth as well? We can look to the recently elected Labor Party in Australia for a partial guide. Immediately upon taking office, the new government granted unconditional amnesty to all of its 9,000 Vietnam-era draft resisters.

Surely with the wealth of precedent of amnesty in this country, an amnesty now could not possibly affect the "viable force in the future" with which the President apparently was concerned in the above statement. The most recent example of United States governmental action resembling an amnesty (we will see below that it was not truly amnesty) was the review board established subsequent to World War II. Obviously that action, following a legally sanctioned and "moral" war, did not prevent procurement of men and women for the military thereafter. It logically follows that an act of amnesty at this time could not effect similar present-day procurement.

The present Administration, desiring for its private reasons to paint a picture of few in need of an amnesty, distorts the numbers of potential amnesty recipients and suggests all have turned from their country in favor of another land. This attempt was shown most clearly in a presidential press conference on 31 January 1973 referencing "those few hundreds who went to Canada or

Sweden or someplace else." The "numbers game" about those in need of an amnesty is a popular pasttime for both governmental agencies and those working for amnesty, each using figures to advantage. In this submission we will only briefly play that game. A careful study of the statistics of any responsible analyst leads to the conclusion that those potentially affected by amnesty number in the hundreds of thousands. By way of example, during the summer of 1973 Mr. Byron Pepitone in his capacity of Director of the Selective Service System stated that 9–12% of draft-aged men were nonregistrants during 1972 (that amounts to perhaps 200,000 men during a year of relatively low draft calls)! And that takes into consideration neither 7,000 convictions under the Military Selective Service Act during the Vietnam era, nor more than 10,000 cases still pending in the offices of the United States Attorney for alleged draft offenses (for a range of charges—a relatively small number relating to nonregistration), nor cases not yet referred to the Justice Department—numbering perhaps 2,000. Also, we must include approximately 32,000 deserters-at-large (more than 500,000 since July, 1966). We must include a half-million veterans with less than an Honorable Discharge for their opposition to the war/military who have limited rights to employment and other rights and benefits taken for granted by fellow veterans. Finally we must take into account a large but unknown number of civilian war resisters who possess court convictions and administrative records due to their public opposition to the draft/military/war—barring them from many rights and privileges. The numbers clearly are large, and clearly the vast majority are within this country. Some chose to leave this country—a relatively small percentage—and they surely deserve no blame. They have suffered greatly for their beliefs and opposition. The others remain within our borders, if not our society: in our jails, courts, stockades; underground; on unemployment lines.

Above we have shown large numbers and diverse categories of Americans in need of amnesty. Indirectly of course even larger numbers suffer. We have outlined precedent for amnesty. We have placed amnesty in the larger context of the war. But we have not outlined a specific description of what a just amnesty must be. Affiliates of NCUUA and others differ in one degree or another concerning some specifics, but together we must insist upon the following as essential to just amnesty legislation.

A just amnesty is a universal amnesty. That is, it must encompass all of the categories outlined above. It is unreasonable and unfair to attempt to differentiate between them. Each individual acted when s/he felt compelled to do so. An act of protest against an immoral and illegal war is precisely that, regardless of time or manner expressed. The difference is merely one of "timing." It is a question of equal justice before the law. That being the case, the only possible justification for an amnesty other than universal might be one of national interest. Precedent shows clearly that an amnesty is prejudicial to neither national security nor interest. A just amnesty must be universal.

At the same time, a just amnesty must be unconditional. War objectors were not the real criminals during the war in Indochina. Any punitive action implies guilt on their part. Resisters make it clear that they will not accept punitive "strings" attached to an amnesty. One exile speaks of these strings: "Partial amnesty (an amnesty with "strings") would be a travesty of justice and would be totally unacceptable to me and to everyone I know in a position similar to mine."

If one thinks of these men and women as eagerly waiting at the edge of the Canadian border, ultimately willing to accept some conditions, s/he should consider further comment by this same resister:

"Most 'deserters' and 'draft dodgers' now in Canada do not intend to return to the U.S. to live even if amnesty were granted * * * If amnesty were granted * * * I would, of course, avail myself of it to visit friends and relatives but probably for no other reason.

Some commentators and legislators suggest case-by-case review for war resisters. Review boards would be established to grant amnesty to some, to those with "pure" motives; and deny it to others—similar to action subsequent to World War II. This line of argument brings forth many problems, which probably are insurmountable. The first difficulty lies in judgment of motivation. If psychology has taught us anything in recent years, it is the gestalt observation that human beings are complex, that their actions generally are predicated upon a myriad of often inseparable motives. This unquestionably is true in the case of those faced with the decisions of killing and being killed. How does one draw a line between those to be amnestied and those not to be amnestied? And if one attempts to do so, does this not add yet another advantage to the long list of others for the white, middle-classed individual, at the detriment of his less-well-versed counterpart of more meager means?

The white and middle classed have had all the advantages in relation to the war and military. Better educated, they had advantage in expressing claims to their draft boards, with the same advantage applicable to a possible amnesty review board. In college and in their place within our society, they also had more access to information on how legally to avoid induction. Once in the military, the remaining middle classed—primarily due to education and "pull'—had more access to avoidance of Vietnam duty—or at least found themselves in safer roles behind a desk or behind higher rank. Finally, when first learning about military service and the draft, the disenfranchised often saw the military as a way out of the social situation forced upon them. It was only when in the Armed Forces that they learned the actualities of that life. They learned at the same time that the military is one job in our society which they could not quit. Some attempted legal discharges, which are few and difficult to obtain. That route left many of those fortunate to obtain release with most unfortunate discharges less than that of an Honorable Discharge. Others found no recourse but to either confront directly with overt action the system in which they found themselves; or they simply walked away. Statistics presented by others bear out the discriminatory class bias asserted here.

Review boards serve to perpetuate class discrimination. But even were this not the case, review boards are totally unrealistic. An amnesty, as we have shown, must affect hundreds of thousands of men and women. Financially that is an impracticality. Temporarally it is an impossibility. The review board subsequent to World War II required eighteen months to make a cursory examination of 15,000 cases. Even if morally justifiable, sheer numbers makes of a review board at this time a hopeless nightmare.

A final comment may be made before leaving discussion of review boards. American tradition demands judgment by peers. Who would judge those who, at great personal sacrifice, resisted an immoral war? It would be absurd to suggest the same pragmatic individuals who condemned the bodies and lives of the resisters originally in the perpetuation of an immoral and illegal war. Who then would judge?

Clearly we must have universal and unconditional amnesty, without case-by-case review for all war resisters. Grounds most frequently presented in summation for such a position are two-fold: the men and women involved are guilty of no crime; and now, belatedly, it is time to blind together a badly-divided nation to build for a common, prosperous and happy future with unity and solidarity. We agree with many observers that some of the best talent this county has produced during the past ten years is being laid waste. Some of this talent cannot be regained. We must act swiftly before even more is lost.

Sponsors of many bills presently before Congress offer testimony at these hearings. While some affiliated members of NCUUA point to certain current legislation as reasonably good rallying points, NCUUA endorses none of them in their present forms. None of the proposals are truly universal; most do not even meet the test of being unconditional. Some even suggest the establishment of a review board. We conclude our statement, in contrast with present legislation, by speaking unequivocally for the introduction and enactment of measures for universal and unconditional amnesty for all war resisters, without review of individual cases.

UNIVERSITY OF NOTRE DAME,
Notre Dame, Ind., March 2, 1974.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: I write to lend my support to legislation that would grant universal and unconditional amnesty. I respectfully request that a copy of this letter be included in the record of the hearings of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary.

The deep scars of the Vietnam War remain with us. We have not overcome the frustration, division and disunity that afflicted our country as never before since the Civil War. The Vietnam War produced a cleavage of the young and the old a cleavage between those who saw the war as an obscenity and those of the military industrial establishment and the government who prosecuted the war, with enthusiasm at times. There was perhaps never before in our history such division between the military and the civilian.

The havoc caused by the war is gruesome. Fifty thousand young men lost their lives and another half million young Americans will bear the scars of the war on

their bodies. We spent $130 billion to devastate the earth and its people and millions of Vietnamese—North and South—and their neighbors—Laotians and Cambodians—were killed and maimed and wounded.

Less tangible havoc also was caused by the war. There never was a time when the most sensitive people in our society, those morally sensitive to values and to what is right, have been more alienated to their own country, many to the point of leaving it. One of the unfinished parts of the business that faces us today is to strain ourselves a little to bring back into the fullness of the society in which we live in America those who have been totally alineated from it, simply because they could not accept its values in the time of war.

There are those in prison today because they stood up and said, "I will not serve in such an immoral conflict." Some 70,000 men, more than the number killed in Vietnam, went to places like Canada and Sweden because they felt that they could not live in this country if it meant that they would have to take part in something they did not believe in. I think that it has been of great moral value to this country that so many young people have been willing to make extreme sacrifices—to go to jail or go abroad—simply because they wanted to show that they really believed something so deeply that they would put their freedom and their futures on the line for it. I think the country should cherish people like this. I think that there is so much good will and so much virtue in all of this that we should act firmly to bring about a reconciliation.

While unconditional amnesty may create some problems because of the wide divergence in the circumstances and motivation of the many different kinds of personal actions involved, I believe that the situation that created our difficulties today was so horrendous that it is best to get it totally behind us. Inequities that might be occasioned by total and unconditional amnesty would certainly be matched by other numerous inequities in the present situation. Our recent past does not do us proud, but I think that we must look to the future with love, with hope, with courage and with dedication. Great inequities have been committed, and it is likely that they can be removed only by great generosity and magnanimity.

Sincerely,

Rev. Theodore M. Hesburgh, C.S.C.,
President.

The Episcopal Church in Western Kansas,
Salina, Kans., March 5, 1974.

Hon. Robert Kastenmeier,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Committee on the Judiciary, House Office Building, Washington, D.C.

Dear Congressman Kastenmeier: I have learned that your subcommittee on Courts, Civil Liberties and the Administration of Justice expects to hold hearings on the question of amnesty for war resisters on March 7 and 8. I would very much desire opportunity to testify before your subcommittee, but I am prevented by distance and schedule from doing so and for that reason I would ask you to accept my brief statement as contained in the body of this letter.

I favor a general amnesty for all war resisters opposed to the Viet Nam war whether imprisoned, escaped from prison or the armed forces or having evaded military service by any means such as leaving the country. I believe such amnesty should be granted by the President with the approval and backing of the Congress and that it should go into effect at the earliest possible moment.

Without casting any reflection upon those who served in the Armed Forces in that war, I believe that those who refused to serve have made an appropriate witness to the world on behalf of the United States and with the conclusion of the war, there is no longer reason to punish them or require that they live in fear of or disregard of such punishments.

I am aware that many of our citizens are willing to consider amnesty for persons who were "conscientiously" opposed to the war, but somehow feel that a general amnesty would allow many to be forgiven who were cowards or otherwise were unwilling to serve their country. I am quite clear that many of those who entered the Armed Forces and did serve could hardly be considered as having done this "conscientiously" so I cannot understand this demand for a good conscience always on the part of those who have resisted. In addition to this, the interminable number of individual hearings and judgments which would be required under any amnesty plan other than a general amnesty would seem to defeat the whole concept of amnesty as I understand it.

For these reasons, I am enthusiastically in favor of a general amnesty, and I would hope and pray that your subcommittee will find it in your judgment to

make such a recommendation to the House Committee on the Judiciary which will in turn report out a favorable bill on general amnesty to the Congress as a whole in the very near future.

Thank you indeed for this opportunity to be in touch with you and the subcommittee.

Sincerely yours,

Rt. Rev. WILLIAM DAVIDSON,
Bishop of Western Kansas.

DAYTONA BEACH, FLA., *March 7, 1974.*

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts of the Judiciary Committee, House of Representatives, Washington, D.C.

SIR: On the matter of extending amnesty to those citizens of the U.S.A. who have evaded draft into or deserted from the armed services of the U.S.A. for whatever reason.

Never! They made their bed, now let them lie in it.

Some have called them noble for acting in accord with their conscience and refusing to be involved in or continuing in an unjust war. Others have called them traitors and cowards.

Neither the appellation nor the reason for their action in evading or deserting is important.

Our society, to continue, must be governed by certain rules of conduct, which, if violated, subject the offender to specific punishment. Without such rules, society fails, and the survival of the fittest takes over.

Most of us need the protection of those rules.

The subject individuals knowingly exercised their right to take an action which was subject to specific consequences. To re-enter our society, they must first be subject to the punishment specified for their action. Society also has rights.

To allow these individuals to emerge from their havens, either here or abroad, and rejoin our society without being punished in accordance with the rules, is to tear the very fabric upon which our society is based. In my opinion, the meeting of this committee to hear pleas and appeals for amnesty is a rent in the fabric which will later be regretted.

I do not speak for any group, but I have talked with many men who have served this country in time of war. All have suffered from that service—separation from loved ones, privation, living under regimentation, subject to, and being (in some cases) wounded and maimed. All have been vehemently opposed to even the consideration of amnesty.

For a community or nation to form and survive, a code to live by must be promulgated, agreed to, and then enforced. "Law and Order."

In the past, as now, influence, emotionalism, manipulation, technicalities, subtleties of interpretation and delay have been used to enable the violator of the law to escape punishment. Proponents of amnesty are using, and will continue to use them all.

Some twenty million (20,000,000) citizens have served in the armed forces and the majority of them were draftees.

Probably, most of the draftees had valid reasons for not wanting to be conscripted into the armed services, but they accepted it because the draft provisions were part of our law and the punishment provisions were considered to be enforceable. Were they naive or misled?

The entire V.A. structure was created to assist and continues to assist the returned veteran population by a greatful nation. Why?

Wars have been the history of mankind and there is no reason to believe that the U.S. will not be involved in another.

Of what effect would the draft law be in speedily gathering an armed force if past history showed that draft evaders were lightly punished or granted exemption from punishment by the very body which created the law.

Even the consideration of extending amnesty is a slap in the face to every veteran, a dishonoring of all the service dead, and an encouragement to every pacifist and subversive ready and waiting to give this country away or to assist in its conversion to another ideology.

Please include this letter in the Committee's record of the hearing.

Very turly yours,

JOHN H. BURGESS,
Past National Commander,
Military Order of the Purple Heart of the U.S.A., Inc.

Be it resolved that the Senate of Priests of Saint Paul and Minneapolis instruct the Chairman of the Justice and Peace Committee of the Senate to appoint a delegate(s) to accompany, in the name of the Senate, the Minnesotans for Amnesty Committee in their meetings with Congressmen and Senators.

Be it resolved that the Senate of Priests of Saint Paul and Minneapolis endorse the petition of National Clergy and Laity Concerned on Amnesty.

Passed by the Senate of Priests of Saint Paul and Minneapolis in the above form on August 16, 1973.

AMNESTY PETITION

For all those whose opposition to the war in Indochina brought them into conflict with the laws of the Government, we ask amnesty. We call upon the Congress to enact amnesty in its legislative authority to determine what is the law. We call upon the President to declare amnesty by his executive authority.

Amnesty is not pardon. In judicial tradition, amnesty forgets or blots out the offense for the sake of reconciliation and a new beginning. Let us remember in proclaiming amnesty we affirm our tradition of defense of conscience, the duty of individuals to judge for themselves what is right in the face of conflicting duties, and the foundation of our society on higher moral law.

This war has brought no heroes but only victims. Therefore let us not be vindictive toward one group to assuage the suffering of others. While we are making peace with our enemies, let us be reconciled among ourselves.

We may be brought together again only if redress is provided for those who had to face jail or exile for their convictions. Let all those who are convicted be set free and all those facing prosecution or who might be prosecuted be immunized from further jeopardy and all records wiped clean. For all deserters, draft violators, and those accused of civilian acts of resistance let there be a new beginning.

Let us amnesty also all those who, because of the war, were brought into extenuating circumstances in which they breached civilian or military regulations or were denied the full protections of due process. For the half million veterans who are now being punished for life by other-than-honorable discharges, let their records be corrected to make them eligible for benefits that would facilitate a more hopeful future.

Religious tradition teaches that "you should not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudges against the sons of your own people . . ."

We cannot restore to life our dead soldiers, nor undo the hurts and wounds of others. We cannot undo the devastation of the lands and people of Indochina. We can repent and work for post-war healing. An unconditional amnesty would free us for a responsible and serious effort to rebuild our divided people.

Copies of this petition are available, at no charge, from Clergy and Laity Concerned. When you send in your completed petition, if at all possible, we ask that you enclose a check for $5 to $10 so we can escalate our drive for amnesty

with ads in journals and publication of amnesty material, and facilitate work in local communities on this issue.

Return to
Clergy & Laity Concerned
Amnesty Program
235 E. 49th St.
N.Y., N.Y. 10017

LONG ISLAND PRESBYTERIAN PEACE FELLOWSHIP,
Selden, N.Y., March 6, 1974.

WILLIAM DIXON,
Subcommittee on Courts Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR MR. DIXON: Please enter into the records of the hearings of your committee concerning amnesty our plea that amnesty be granted.

Ample evidence has been presented already that the justifications for our involvement in Viet Nam were contrived (e.g., The Gulf of Tonken incident, et al.) Those young men caught in the draft, who felt that they and the country had been "had" protested in the only way possible to them—resisting the draft. Resisting by imprisonment or by exile.

It hurts us yet to go back over that old ground. Therefore, we feel that it is time for a "freeing" "generous" gesture by the Congress or the President. Declare amnesty in as open, and non-condescending a way as possible.

While we personally believe there ought to be an apology extended we recognize the small likelihood of that being done. Let there be amnesty!

Sincerely,

NORMAN W. MINARD,
President.

AMVETS,
Washington, D.C., March 7, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman of the Subcommittee on Civil Liberties and Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: With the end of the role of United States combatant forces in Vietnam, the question of amnesty has again stirred the emotion of the American public. AMVET represents a vast segment of American veterans ranging from those who served in World War II, including those young veterans who are returning from the Southeast Asian conflict.

As National Commander of AMVETS, I must reiterate our vehement opposition to the consideration of amnesty for those deserters and draft dodgers who left this nation and those who went underground in this country. It is a known fact that those Americans who served in this nation's Armed Forces during the Southeast Asian conflict received hardly any word of praise nor were they sent off with marching parades or any fanfare. Due to the unpopularity of the war, these veterans returned to America inconspicious without any ticker-tape parades to greet them. Over 800,000 Americans returned home disabled, while 50,000 paid the ultimate sacrifice. In the tradition of this organization, I will reaffirm our support of the American way of life, and, therefore, I cannot support any legislation that would grant amnesty to those individuals who deserted their country.

We feel that amnesty would serve as a harsh slap in the face to those loyal Americans who served this nation in time of need.

Yours in patriotism,

BERGE AVADANIAN, *National Commander.*

STATEMENT OF RONEY F. HARTLEY, NATIONAL SERVICE AND LEGISLATIVE DIRECTOR, AMVETS (AMERICAN VETERANS OF WORLD WAR II, KOREA AND VIETNAM)

Mr. Chairman and Members of this Subcommittee on Civil Liberties and Administration of Justice.

We of AMVETS wish to thank you for this opportunity to present the views of our organization as it relates to Amnesty.

On March 29, 1974, America will observe a day of honor for the Vietnam Veteran. That day marks the anniversary of the last United States Combatant to leave Vietnam.

AMVETS realizes that the war in Southeast Asia was this Nation's most controversial conflict, with the brunt of its unpopularity being carried by those men and women who served in America's Armed Forces during those troubled times.

We would like to point out that during the Vietnam conflict, over 50,000 brave Americans paid the ultimate sacrifice for their beliefs in freedom and loyalty to their country, while those individuals who deserted this country shouted insults and burned the American flag.

While the deserters and draft dodgers resided safely in other countries, over 800,000 casualties were returning to America to face the long road back to rehabilitation. These disabled veterans did not desert, they served their country proudly and honorably.

We must not tarnish the memory of those patriotic Americans who died for the American principles, by granting amnesty to those radicals who refused to serve their country.

The deserters and draft dodgers turned their backs on America and left this country by their own accord, fully realizing that it was their inherent obligation to protect, defend, preserve and uphold the Constitution of the United States, not only for this generation but for all future generations of Americans.

It is in this respect that AMVETS firmly opposes any Legislation that would grant amnesty to those individuals who shirked their legal and moral obligations to serve their country.

In conclusion, we would like to again thank this Committee for allowing the AMVETS organization to voice our immediate concern in this matter of amnesty.

GLADSTONE, MICH., *March 6, 1974.*

Representative ROBERT KASTENMEIER,
House Office Building,
Washington, D.C.

DEAR SIR: I am in favor of unconditional amnesty.

The only support I would give for conditional amnesty would be if those persons who "dodged" the draft by hiding out in the National Guard; those with student deferments; occupational deferments; physical deferments, etc. would be required to serve some form of alternate service.

It would be only fair to state that many of the above deferments were legitimate, but at the same time a large percentage of them were used to avoid the draft.

In closing, for what ever it means my son Charles L. Stewart, Jr. was KIA 31 Oct. 1972 in VietNam. Also I served as a Combat Infantryman in W W 2.

Sincerely,

CHARLES L. STEWART, Sr.

P.S.—I have been in favor of unconditional amnesty for some years, even before my son was killed. If you wish to contact my congressman Rep. Philip Ruppe his office should confirm that I have been for amnesty for four or five years at least.

GRANDVIEW, TENN.,
February 26, 1974.

Mr. WILLIAM DIXON
Counsel, Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. DIXON: Can Americans accept the fact that the war resisters might have been right? The war in Southeast Asia still goes on with Americans still stationed in Thailand in order to keep the bombers flying.

My son was killed in Vietnam. He died in vain. I am a World War II veteran; I served gladly to rid the world of dictators, but I will always regret that I didn't help my son go to Canada or to prison.

President Nixon is calling for March 29 as POW day. Why doesn't he proclaim Amnesty Day for the war resisters who helped to awaken America?

I support amnesty for the Americans who are in exile or in prison for refusing to serve in the Vietnam war.

Peace.

ZELIA M. JENSEN.

RESOLUTION ON AMNESTY FOR WAR RESISTANCE PASSED BY THE VILLAGE INDEPENDENT DEMOCRATS, DECEMBER 13, 1973

Resolved, That VID declare its support for all those, at home and abroad, who have resisted participation in the unjust and unconstitutional war in Vietnam, whether by refusing induction, deserting the armed forces, emigrating to avoid conscription, or by demonstrating their resistance in any non-violent way.

That VID urge that amnesty be declared for all those who face prosecution for their resistance; that those who are presently in prison or military stockades, for their refusal to participate in the Vietnam war, be released by executive action; that legal proceedings pending against war resisters be dropped and court records expunged; that those who deserted or were dishonorably discharged for engaging in anti-war activities be granted honorable discharges; be it further

Resolved, The VID form an ad hoc committee to implement this resolution with an ongoing program to focus public attention on the urgent need for legislation on this issue; to inform ourselves and the public at large about the proposals that have been made in this area and to help develop support for this position.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 19, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, House Judiciary Committee, Rayburn H.O.B., Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a copy of a letter written by Mr. Thomas Cave of Virginia Beach, Virginia. Mr. Cave directs his remarks to the issue of amnesty. I would certainly appreciate it if his comments could be made a part of your official records.

Thank you for your assistance in this matter.

With best wishes, I remain.

Sincerely,

G. WILLIAM WHITEHURST.

Enclosure

VIRGINIA BEACH, VA.,
March 11, 1974.

THE VIRGININIAN-PILOT,
Norfolk, Va.

DEAR SIR: Your editorial re amnesty in today's paper requires, I think, a reasoned attempt to reply in order to counteract the damage it could do.

Desertion and draft evasion were not unique to the Viet-Nam conflict. "Protesting with your feet" has been the hallmark of the Summer Soldier and the Sunshine Patriot ever since "the Assyrians came down from the North like the wolf on the fold." Article 136 of the Code of Hammurabi, put into effect over 2,000 years before the birth of Christ, provides punishment for one who deserts his city. Subsequent codifications of the law such as the Code of Justinian, the Code Orlean and the Code Napolean contain such similar provisions. We can encounter in the states along the Eastern seaboard many descendants of draft dodgers and deserters from the British and Prussian armies who were not particularly, morally convinced in the rightness of their king's cause against the rebellious colonials. Therefore, let us say to those young men who stood by their convictions and fled to another country rather than to stay behind and obey the law of this one—"Go, and no ill-will follows you. Become a good citizen of Canada or Sweden or wherever and may Peace and understanding be yours."

Amnesty on the other hand presents a different question as you so ably point out. By legal definition, generally, it is general pardon by the sovereign authority for crimes committed against the state—usually political. Specifically, desertion and draft evasion have been made statutory crimes by the sovereign body of our country, the Congress of the United States. We are either a nation of Law or a nation of Men and we cannot be both. To retroactively apply amnesty across the board would be equivalent, roughly, to saying to the thief who stole your money, or the arsonist who burned your house or the murderer who killed your brother "Allee Allee All's in free."

Should those who have run away with good motive and from the stirrings of social conscience desire to return to our country and once again assume the rights and burdens of citizenship, then let them present their matters of extenuation

and mitigation before the bar of justice. A general amnesty is not the way, for not only would it insult and dishonor the citizens of America who since 1775 stayed and carried the burdens of citizenship, obeying the law of the land no matter how much they may have personnally disagreed with it, but it would also set a precedent that in future crises could be used to crumble the basic concept of the citizen army. If every soldier could decide where and when and against whom he elected to fight, knowing that eventually his decision would be ratified by a pusillanimous government, then no citadel would stand and no defense would ever effectively defend.

Opposition to a general amnesty is not vindictiveness; it is the lessons of the past and concern for the future; it is awareness of the fact that hand in hand with rights goes its concomitant, responsibility. Your editorial advocates neutralism on the issue so as to move the country ahead. Need you be reminded that nothing moves, ahead or back, when it is in neutral.

Sincerely yours,

THOMAS HARRINGTON CAVE.

[From the Virginian-Pilot, Mar. 11, 1974]

AMNESTY IS MOVING ON

Amnesty is an emotional issue and is going to remain so until the nation's Vietnam War wounds are fully healed. That is going to take time.

Nevertheless, the hearings on the amnesty bills before the House of Representatives are useful. For talking about amnesty contributes to the healing process.

Consider the distinction, for instance, in saying that amnesty should be granted to war resisters, with connotations of martyrdom and nobility, and saying that amnesty should not be granted to draft-dodgers, with connotations of cowardice and criminality. Yet the "draft-dodgers" and the "war resisters" are the same.

It is difficult to be precise on the subject. Even the extent of the problem is open to question. Those who favor a blanket amnesty to deserters, draft violators, exiles, and all who received less than honorable discharges during the Vietnam War are talking of hundreds of thousands of veterans and war resisters.

By contrast, the Defense Department minimizes the problem. By its definition, there are only a few thousand fugitives from justice to be considered. Although more than half a million men deserted during the war, all but 28,000 returned to the control of the military and had their cases settled, according to the Pentagon, Of the 4,206 GIs who deserted to foreign countries, it says, 2,808 remain there.

According to the figures that Walter H. Morse, general counsel of the Selective Service System, supplied to a House subcommittee last week, 19,271 draft evaders were indicted and 7,932 convicted. Half got jail sentences and half were placed on probation, while just 134 remain in prison.

Furthermore, Mr. Morse said, there are 5,100 draft evaders under indictment and another 3,080 being investigated by the FBI. "In sum," he said, "we are speaking of a maximum number of less than 17,000 violators who could be affected by a blanket or general amnesty, which amounts to less than 1 percent of the total number of indicted men during the Vietnam War."

But, of course, the numbers game is irrelevant to amnesty as a moral question—and that is the emotional question.

The Administration's position, reflecting Mr. Nixon's views, is against amnesty, period. "To grant what these few thousand deserters demand would be to dishonor those millions who served their country with honor," the President said last March. That is still the White House view.

Furthermore, the White House now says that amnesty is a Presidential prerogative, and argues Congress does not have the power to grant amnesty by legislation. While the power of the President to grant amnesty is unquestioned, the argument that his is the exclusive power seems unsound. The argument is a new one and constitutionally unclear. But logic suggests that if Congress has the power to require a young man to serve in the armed forces, it also has the power to excuse his refusal to serve.

As a matter of practical politics, Congress is not likely to do so yet. Amnesty is not politically popular. (According to a 1972 poll, it is favored by 36 percent, opposed by 60 percent.) And it is the kind of question where there are more votes to be lost than won. If one is making predictions, amnesty is an idea whose time hasn't come.

But it is inevitable, or so history tells us. Acts of amnesty always follow wars. "Never" is a word history mocks.

Amnesty isn't a welcome home. It isn't a confession that the war was wrong. It isn't even forgetting. It is just moving on, to express it in neutral terms. The United States is moving on and it is big enough to forgive. Maybe not now. But in time there will be amnesty for those who fled the Vietnam War.

AMNESTY

San Fernando Friends Meeting on this date (2/17/74) approves and recommends to Friends everywhere and to our representatives in congress the following minute on amnesty from the Philadelphia Yearly Meeting of the Religious Society of Friends:

"In the conflict between the rights of conscience and the Selective Service and military systems, we reaffirm our belief in the Peace Testimony which calls for opposition to all wars and conscription. Although the final burden of decision about the extent of resistance to war rests with each individual, we declare that our first allegiance is to the God of love. If this allegiance is challenged by the demands of state, we must obey God rather than state. The violators of the Selective Service Regulations or the Universal Code of Military Justice, in exile, in hiding or in prison, deserters from the military, soldiers released with less than honorable discharges, and resisters with prison records, include those who, by reason of conscience, refused to participate in the violence inherent in imposing this nation's will upon an alien culture.

"In war there are no victors, only victims. Participants and non-participants alike suffer the emotional damage of disunity and discord. After the most divisive war in our history, we must understand that our overriding need is for reconciliation. Amnesty, we believe, is a first step towards reconciliation. Amnesty is 'legal oblivion' as distinction from 'pardon'. It would erase injustices of the past and thus help us face the future without bitterness.

MINUTE

"Philadelphia Yearly Meeting of the Religious Society of Friends (Quakers) urges the President and the Congress of the United States:

1. To bring about a general and unconditional amnesty for all who disobeyed laws and orders which, if observed, would have involved them in the war system during the Indochina War.
2. To expunge their criminal records.
3. To restore their civil liberties.
4. To drop all present and future prosecutions and to free those currently under legal restraint.

"If this nation is to regain a sense of unity and common pupose, nothing less will do."

NOTE.—The above statement was adopted by the Southern California Quarterly Meeting of the Society of Friends on February 23, 1974. We would like it submitted for the record of the hearings on amnesty sponsored by the Subcommittee on the Courts, Administration of Justice and Civil Liberties of the House Committee on the Judiciary.

Thank you.

BERNARD L. MATHEWS.

BOARD OF CHURCH & SOCIETY,
SOUTHERN NEW ENGLAND CONFERENCE,
UNITED METHODIST CHURCH,
March 6, 1974.

Mr. BILL DIXON, Esq.,
House Judiciary Committee,
Washington, D.C.

DEAR MR. DIXON: At the suggestion of Member of Congress, Robert F. Drinan, enclosed please find statements from the Southern New England Conference Board of Church and Society, the National Board of Church and Society and a paper by George R. Lucas, Jr., entitled "Amnesty: Case of the Prodigal Son?" It is my understanding that these, together with this letter, can be included in the minutes of the amnesty hearings now being held by the subcommittee of the House Judiciary Committee.

The United Methodist Church is actively working for a ministry of reconciliation, not only for draft resisters and deserters; but a reconciliation in the hearts of the American people who are to be counted among the victims of the war in Indo-China. As each day continues to bring death and destruction to the people living there—in spite of the supposed ceasefire—it is essential that we bring back to America those young men with the morality and courage to say "no" to killing. Perhaps if we can wipe the slate clean for them, it will be a new beginning for us as a nation. Only then will we see new possibilities for our mission as servant to the world.

Sincerely yours,

PATRICIA J. CALLAN,
Chairperson, Board of Church and Society.

Enclosures.

RESOLUTION ON AMNESTY

Whereas the Board of Church and Society of the Southern New England Annual Conference has long advocated the cessation of all military activity in Indo-China and the removal of all military personnel from that war-torn region; and

Whereas the negotiated cease-fire for Vietnam has enabled the return of prisoners of war and the disengagement of military operations from a tragic and immoral destruction of life and property; and

Whereas we all share the guilt and stand under the Judgment and Grace of God; and

Whereas a call to obedience to individual conscience being central to an consistent with the scriptural teachings of the Church of Jesus Christ and the Discipline of the United Methodist Church: Therefore, be it

Resolved, That the Southern New England Annual Conference of the United Methodist Church petition the President of the United States and each member of the congressional delegation from the States of Connecticut, Massachusetts and Rhode Island to grant a general amnesty to all who for reasons of conscience dissented from military conscription and to all military personnel accused and/or convicted of refusing to serve during the years of this country's participation in the War in Indo-China.

Adopted June 7–10, 1973; Southern New England Annual Conference, meeting in regular session at Mount Holyoke College, Hadley, Massachusetts.

STATEMENT ON THE CHURCH IN THE POST VIETNAM ERA: MINISTRY, AMNESTY, AND RECONCILIATION

The war in Southeast Asia has placed new demands upon citizens of the United States. All persons have been affected, many permanently, by the war.

Cessation of direct military involvement has not ended these consequences. The church must now move in directions which minister to all persons to whom the hurt remains. Needed ministries include the following emphases:

MINISTRY TO THE VICTIMS OF THE WAR

The cost in human loss of life and permanent disability cannot be measured statistically. This is true for all peoples involved—Indochinese, American and others. The cost is profound: whole families have disappeared; entire communities have been destroyed; children are without parents; historic, cultural traditions have been torn apart; political prisoner patterns continue to scar individual and corporate life. Family members who survive in all countries affected by the war can identify with these personal tragedies. These persons deserve every assistance a compassionate church can provide. The church has an immediate ministry to provide pastoral care and to secure other essential service for all such persons and their families through United Methodist personnel and cooperation with other churches and responsible agencies.

MINISTRY TO U.S. VETERANS AND THEIR FAMILIES

The cost of the war in Vietnam involves U.S. citizens both directly and indirectly. Those who served in U.S. military units faced circumstances and sentiments dissimilar to armed forces personnel at any other time in our history. The war, which never had full support increasingly became unpopular. Those return-

ing were not received as heroes. Thousands live in veterans hospitals or go through life severely handicapped. Hundreds of thousands received less-than-honorable discharges, many unjustly. Many found difficulty in reentering society. Emotional stress continues to threaten many of these persons.

All congregations and church leaders must be ready to offer services and facilities for family and veteran groups and agencies which seek to alleviate these problems.

MINISTRY IN CASES OF LEGAL JEOPARDY

We believe that genuine reconciliation demands a broad and general amnesty, without qualifications or conditions, for all who are in legal jeopardy or under legal disadvantage because of the war in Southeast Asia. God alone knows what finally determines the actions of human beings, and all of us know that few of us do anything for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who served in the military. We do not dishonor but respect the consciences of those who fought and died. We see amnesty, not as a matter of forgiveness, but as one step toward the reconciliation of the society.

STATEMENT ON THE CHURCH IN THE POST VIETNAM ERA

The church has a major responsibility to initiate or join efforts to secure amnesty and restore full civil liberties for all such persons who suffered during the Vietnam era who should not be scarred for life.

Each member of The United Methodist Church is challenged to express the transforming power of Christ-like love through his or her commitment to offer understanding and reconciliation to *all* persons, who have been affected by the tragic consequences of the war, in order that the healing of a divided society may begin.

Approved by the Board of Church and Society, The United Methodist Church, at its Annual Meeting in Washington, D.C., October 18–21, 1973. Vote: 44 for, 6 against, 2 abstentions.

Amnesty: Case of the Prodigal Son?—An Exegetical Study

(By George R. Lucas, Jr., Garrett Theological Seminary, Evanston, Ill.)

[From Today's Ministry, April 1974]

The questions of both our individual attitudes and national policy towards draft resisters were topics of lively debate in many United Methodist annual conferences during the summer of 1973. Although other urgent national and international political developments have temporarily submerged this debate, 1974 will certainly witness a renewal of the controversy. For in spite of claims to the contrary,[1] the issue of amnesty haunts both individual and national consciences: it will not be ignored or passed over, but will emerge one day from the shadows of our political awareness to demand full and final resolution.

In debating the amnesty issue within the church, the scriptural text that seems to come most readily to mind is the parable of the Prodigal Son (Luke 15:11–24). Interestingly enough, the parable has been employed by opponents and proponents of amnesty alike to justify their respective positions. Proponents of "unconditional" amnesty naturally stress the "unconditional forgiveness" by the father of the errant son as the pertinent lesson for their viewpoint, while advocates of "conditional" amnesty and outright opponents of the measure cite the "repentance" of the son as the important condition of the parable.

This situation is but another manifestation of the "hermenutical problem," the fact that "One cannot think as a Christian without pre-supposing a certain way of understanding the Bible." [2] Such confusion ultimately calls into question our ability to discern an effective relationship between our biblical understanding and the complex, confusing issues that confront us in everyday existence—an ability that many would maintain as fundamental to the Christian faith. Through careful discussion of the Prodigal Son parable, I hope to render its peculiar message regarding the contemporary issue of amnesty less ambiguous. In the process, I intend to demonstrate by example that more careful attention both to

---

[1] E.g., see George Anastapolo: "An Amnesty on Discussions of Amnesty;" published in an edited version by the *Chicago Tribune;* February 25, 1973, sec. 2, p. 2.

[2] Paul Lehmann, Ethics in a Christian Context (1963: Harper & Row), p. 26.

method and to the lessons of our colleagues in the field of Biblical Studies will render all of us in the clergy and laity more effective in relating the lessons of scripture to the problems encountered in the church and the world.

THE EXEGESIS

In strict context, the Prodigal Son parable is one part of a theological justification for Jesus' ministry to the alienated, which sets the stage for a counteroffensive against the critics of that ministry. The counteroffensive is, of course, contained in the accompanying parable of the Elder Brother. Only with the stipulation that our results must, when in context, focus upon that counteroffensive, does it become legitimate to separate the two parables for the purpose of exegesis.

With this understanding, the salient feature of the Prodigal Son parable, according to Joachim Jeremias,[3] becomes the father's remarkable reaction to his sons' return. The father runs to greet the son while the latter is "yet at a distance." The parable carefully illustrates that the father does not wait to hear the elaborate repentance speech which the son has meticulously prepared (see verses 18f and 21f)—he is simply not interested.

Apparently it is not the purpose of this parable to discuss the prodigal's actions, as much as it is to "dramatize the experience of loss and recovery, of alienation and reconciliation." [4] As Gert Jeremias concludes, "God is like a loving father, who wants his children to come home . . . simply because they are his." [5] This is not a discussion of guilt or innocence, of forgiveness or repentance; not, at least, as we commonly understand these themes. Rather, the parable illustrates that God's acceptance of the outcast is an a priori attitude: the father was, in effect, waiting anxiously on the doorstep with love in his heart, ready to forget the past, to "wipe the slate clean," and to begin anew.

THE INTERPRETATION

Certain features of this foregoing method should be underscored. The biblical passage is first exegeted without considering the proposed application to contemporary issues. Additionally, when interpreting the parables, we must concentrate our attention on the single emergent theme or idea, and resist the temptation to make allegorical identifications of individual characters or events in the parable with "similar" people or events in our contemporary situations. These principles constitute the most basic lessons in elementary exegesis, to be sure. Yet they are precisely the rules which are repeatedly violated by most of us in the clergy and laity during the course of a heated, emotional exchange.

A majority of the participants in an amnesty debate, regardless of their position, will tend to "identify" the father in the Prodigal Son parable with the government and citizens of this country, and likewise the prodigal son with the individual exiled or imprisoned draft resister. Such identification, however, is irrelevant as well as inappropriate, since we are not interested in an allegorical interpretation of the parable. Likewise, repentance and forgiveness are presupposed all too self-assuredly as the central themes of this parable, when, in fact, this examination implies that these two motifs are subordinate to the essential issues of recovery and reconciliation.

Strictly speaking, the issue of amnesty by-passes the emotional debate over who is to blame for the war in Indochina, or for the violation of draft statutes. Amnesty is not related to "pardon" or "forgiveness," as is often incorrectly assumed. Rather, amnesty (related to the word "amnesia") is a legal precedent that allows us to forget the past, to "wipe the slate clean, and to begin anew." As we have seen, it is precisely such an act of reconciliation that is outlined in the parable of the Prodigal Son.

Our problem and its possible solution shape up in this fashion: we cannot punish war resisters, since it is clear that many are innocent—guilty only of acute moral judgment, while convincing arguments and evidence exist for the immorality of the "legal" government involvement in the Indochina war.

Nor are we in a position to "forgive" war resisters, since in many cases it is we ourselves who may stand in need of forgiveness. At the same time, labeling all war resisters as "moral heroes" is obviously inaccurate, since many abandoned

---

[3] Joachim Jeremias. The Parables of Jesus (1972: SCM Press), pp. 128–31.

[4] I am indebted to Dr. Ernest W. Saunders of Garrett Seminary for clarification of this crucial point.

[5] Dr. Gert Jeremias, lecture on parabolic interpretation, given at Garrett Seminary during the Winter of 1972.

all moral commitment solely in the interest of self-preservation. The legal and moral entanglements are simply too complicated for objective judgment. We cannot separate the wheat from the tares (Matthew 13).

All of us affected by this issue—exiles, prisoners, embittered parents and families, war veterans, government officials, and confused, concerned citizens—can only say to one another, as did the father of the prodigal son, "Whatever were your reasons for doing what you did—I don't care. I'm not interested. I care only for the fact that you are my son, and I love you. Welcome home!"

SISTERS OF SAINT JOSEPH OF CARONDELET,
ADMINISTRATION CENTER,
Saint Paul, Minn.

RESOLUTION NO. 55—AMNESTY

Resolution on Amnesty passed by the Delegate Assembly of the Sisters of St. Joseph at its meeting on January 26, 1974:

Whereas the Congregation of the Sisters of St. Joseph is committed to reconciliation as an expression of its mission; and

Whereas the Archdiocese of St. Paul-Minneapolis is beginning a year of reconciliation in preparation for the Holy Year of 1975; and

Whereas amnesty is not pardon, and in judicial tradition amnesty forgets or blots out the offense for the sake of reconciliation and a new beginning: Be it

Resolved, That the Delegate Assembly of the Sisters of St. Joseph, St. Paul Province, endorse universal and unconditional amnesty as an appropriate and concrete response to the post-war division which exists in the United States of America.

"For all those whose opposition to the war in Indochina brought them into conflict with the laws of the Government, we ask amnesty. We call upon the Congress to enact amnesty in its legislative authority to determine what is the law. We call upon the President to declare amnesty by his executive authority."

WAYZATA, MINN., *March 6, 1974.*

Mr. WILLIAM DIXON,
Rayburn House Office Building,
Washington, D.C.

DEAR Mr. DIXON: This letter is in regard to the House hearings on the amnesty issue. I understand that you are accepting data for the hearings. I wish to add my support for unconditional amnesty.

My husband, Captain Charles F. Morley has been missing over Laos for the past four years. I am now well aware of the damage done by misinformation. My husband and I were victims of misinformation about the Southeast Asia war. And guilty of not seeking the facts when we had that responsibility. I hope that these hearings will clear up misinformation by providing the facts. Such as the scope of the amnesty issue, and the thousands that would benefit from unconditional amnesty.

I know how separation is a punishment, and that people should not be punished for refusing to kill; or for having the insight and courage to make hard judgments and decisions. I know that uncertainty is one of life's most cruel punishments. These people have already been punished wrongly. Anything less than unconditional amnesty would be a further wrong.

I do not know if I am a wife or widow. I am a prisoner of war. I live in uncertainty, but I am certain that unconditional amnesty is necessary, needed, and needed now. We must release these prisoners of war.

I am always willing to give any help that I can, or information that I have.

Sincerely,

MICHELE MORLEY.

SCHENECTADY AREA CLERGY & LAITY CONCERNED,
Schenectady, N.Y., March 2, 1974.

Mr. WILLIAM DIXON,
Counsel, House Committee on the Judiciary, Subcommittee on the Courts, Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR SIR: I wish, on behalf of Schenectady Area Clergy and Laity Concerned, to submit the following statement for the Record:

Being the only active peace movement organization in the entire Upstate New York area east of Syracuse, and having contact with a wide variety of political, community, social, and educational groups in our state and nation-wide, we find after much public exposure on the issue that response from Americans is overwhelmingly positive in favor of Amnesty, and we have received very little opposition to even our strongest position in favor of complete and unconditional Amnesty. Thus we wish to bear testimony, for the hearings March seventh, 1974, on Amnesty, that it is our widely-supported opinion that unconditional amnesty for all war resisters, draft deserters, and others who received less than honorable discharges from the United States Military Services for reasons of their opposition to the immoral, unconstitutional, and undeclared war in Southeast Asia, is the only policy which would restore to this divided nation the honor and unity she deserves, and which would bring to an end the years of torment and devision resulting from the Indochina wars.

Amnesty as we support it, is defined as follows: "a general overlooking or pardon of past offenses by the ruling authority;" (Oxford English Dictionary); we also include in the definition: "a pardon relieves an offender from the consequences of an offense of which he has been convicted, while Amnesty obliterates an offense before conviction; and in such case, he stands before the law precisely as though he had committed no offense." (J.S. v. Bassett 5 Utah 133) (1887) The power to pardon, including the power to grant universal amnesties, is well known to have precedents in Presidential and Congressional actions. It is our belief that currently, by precedent after the Civil War, Presidential amnesties have effect; but we also urge Congress to act on this issue as soon as possible. It seems the President in all his power and "honor" is currently not willing to grant amnesty; his misunderstanding of it and his seemingly unreasonable state of mind shows he would not view it as we do.

Unconditional amnesty to all war resisters would in our view, and the view of all those we represent, be the most fitting way to heal the wounds of Vietnam and to honor great Americans who died there.

Further, it is our view that a case-by-case trial procedure for amnesties would be impracticable. Our position is thus distinct from that of the New York State American Legion, which advocates a case-by-case individual trial procedure for amnesty.

I wish to call to the committee's attention that it is very frequently and remarkably the parents of young men who died in Indochina who lead efforts within peace movement channels to obtain unconditional amnesty. Gold Star mothers and parents of many dead Americans who did go to fight in Indochina are some of our most devoted workers. The amnesty we seek would be the most fitting monument to the dead in Indochina.

We are supported in our desire for a universal amnesty by many churchgoers and clergymen who form a critical part of our political and moral fellowship in Clergy and Laity Concerned. We urge you to recognize the broad and heterogeneous base of our support and to take into consideration our suggestions here.

In peace.

Sincerely yours,

SARAH STEUBER BISHOP, *Chairperson.*

STATEMENT OF RUTH DEATS, WEST NEWTON, MASS., PREPARED FOR THE HOUSE JUDICIARY SUBCOMMITTEE HEARINGS ON AMNESTY

My statement is made as an individual citizen deeply concerned about other individual citizens who are caught in the highly controversial matter of amnesty—amnesty for all those who in one way or another violated a law connected with the Vietnam war.[1]

---

[1] Others who testify before your committee will be full of statistics, examples, etc. So this statement is more a personal one;

But I speak also—

(1) as a mother of four—three daughters whose college years were in the '60's, and who each in her own way and with different avenues of involvement in student unrest of that decade faced the moral questions raised by the war—and a son who registered for the draft in 1972.

(2) as a mother-in-law to two sons-in-law, one who had a physical deferment and the other who enlisted in the U.S. navy and served two years in the war area.

(3) as a member of several organizations (Clergy and Laity Concerned, the American Friends Service Committee, Fellowhsip of Reconciliation) which tried to raise the conscience of the religious communities of our country about the terrible loss of life both civilian and military on both "sides" of the Vietnam conflict and which also kept continual pressure on their memberships to inform themselves and their Congressional representatives about what was happening in the whole Indo-China area—not only about loss of life but also the devastation of homes, farms, villages, and of the appalling number of refugees who seemed constantly moving.

(4) as a parttime counselor in a draft counseling center. There on a one to one basis counselors saw hundreds of young men as they struggled with their duty to country and to conscience, as they faced alternatives open to them under the draft system. We also saw and heard parents and friends as they tried to understand demands made on those "eligible" for the draft. While families *in* the war zone were being torn apart, families in the USA were being ripped apart because young men became "refugees" rather than be involved personally in the Vietnam war.

(5) as an individual person who believes each human being is important in the sight of God and therefore warfare as a method of solving political problems is impossible.

So I plead with this Subcommittee of the House Judiciary Committee to recommend complete amnesty to all those who are in exile, prison, underground or wherever because of the Vietnam war for these reasons:

(1) Enough time and talent has alredy been lost by those who would be affected by amnesty. We in the USA have so many problems here which need attention; some of these young people have much to give of their time and talent to working on our national problems. There is also unfinished work to do abroad—materially-wise on homes and land and people-wise, those homeless, mangled, and bewildered in Vietnam, Laos, Cambodia. Some of those who would receive amnesty might feel drawn to "build up" rather than "tear down."

(2) We cannot undo the past. To try to judge each case one by one is much too complicated and lengthy a process. There may be those who having accepted amnesty will prove to be so injured emotionally by the experience of exile or prison they cannot function well in society. Maybe others who accept amnesty would be the very ones to help those having a difficult time adjusting because they have shared similar experiences.

(3) Families and friends of those granted amnesty would be relieved of the burden of anxiety and frustration and thus be freer to turn their concerns to postwar problems—such as relieving famine in West Africa or worldwide ecological problems.

Thank you for this opportunity to be "heard."

SOCIETY FOR INDIVIDUAL LIBERTY,
Alexandria, Va.

WAR RESISTERS DID NOT BREAK THE LAW

There are two different and often irreconcilable concepts of what consitututes the law in the United States today. One concept is that the law consists of whatever any judge or the latest Supreme Court ruling says it is. The second concept is that the law consists of what the Constitution says it is. To put the issue in different terms, one concept is that the law is the decisions and statements of men: the other concept is that the law is a set of basic moral principles and logical conclusions derived from those principles.

The decisions and statements of men, of course, can be the same as or at least consistent with the principles of the Constitution—they may, in fact, be neither more nor less than the enumeration of those principles and their application to new circumstances. But the decisions and statements of men can also blatantly

contradict the principles set forth in the Consitution and they can totally violate and subvert the tinentions of the framers of the Constitution. When such conflicts occur, and, we submit, they occur often today, one must choose between two opposite and fundamentally different concepts of law: either conformity to principle must be set above the whims of men, or the whims of men will triumph and ultimately totally destroy all principle.

Historically the United States of America was conceived of as a nation of *law, not men.* This means that the principles of individual liberty set forth in the Declaration of Independence and the Constitution—the inalienable rights of the "individual to life, liberty and the pursuit of happiness", the liberties guaranteed in the Bill of Rights—were *the supreme law of the land. Article VI* of the Constitution states, "This Constitution and the Laws of the United States which shall be made in Pursuance thereof—shall be the *supreme* Law of the Land—" "(emphasis added). Legislation, a presidential decision or even a Supreme Court ruling which contradicts the content and intent of the Constitution is, therefore, *not law,* The laws of the United States can only be principles enumerated in or consistent with the Constitution. The fact is that the Constitution has been so frequently ignored that it can be said there is, in effect, two Constitutions in this country—the real one which is honored only as a figurehead, and an unstable *de facto* one which is whatever the Supreme Court, the President or the Congress says it is.

WERE THE DRAFT AND WAR IN VIETNAM CONSTITUTIONAL?

Every American with a mind and the capacity to use it has the right to read the Constitution and decide for himself what is says. Supreme Court justices do not have a monopoly on thought, wisdom and truth. Ultimately, they are fallible like you and I. They differ from us principally not in their veracity of thought, but, rather, in the position which they occupy. Even the decisions of any specific Supreme Court are not necessarily *final* because they can be and have been reversed by other Supreme Courts and Constitutional amendments. Court decisions, legislatives acts and presidential mouthings can be and have been rendered null and void by simply being ignored.

Some questions of Constitutional law are complex and difficult, and they require great knowledge to deal with. But others are so simple that a child could answer them. The Constitutionality of the draft and the war in Vietnam are such questions.

IS THE DRAFT CONSTITUTIONAL?

Many articles of the Constitution uphold the unconstitutionality of the draft; none do otherwise.

Amendment XIII states, "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The draft, by definition, is involuntary servitude. No attempt to justify this servitude can disguuise its involuntary nature. Some argue that there was no intent to apply the XIII Amendment to the draft. That argument is not a good one because the government continually ignores the intent of the Founding Fathers and other writers of the Constitution, saying the Constitution should be elastic. Whether it should or should not be elastic is an unsettled question.

Article I, Sec. 8 states that "Congress shall have the power"—to raise and support armies.", and to make all laws which shall be "Necessary and Proper" to execute that power. That article does not state that Congress shall have the power to compel military service just as it doesn't state that Congress shall have the power to compel postal service which it authorizes in the same article. Since armies can be and have been raised by voluntary enlistments, the draft is not "necessary" and, therefore, not Constitutional. Furthermore, compulsion and freedom are opposites. Since freedom is the value that is the very foundation of the greatness of the United States, any attempt to weaken it can never be considered "proper".

To some people, Article 1, Section 8 and the XIII Amendment may seem to be in conflict with each other. This conflict can be resolved by using the guide which states that when two laws conflict, the more specific one holds. In the case of the drafted vs. the volunteer army, it is the XIII Amendment that is the more specific law. Thus, there *is a restriction* on the means that the government may constitutionally use to raise a military force . . . no slavery or involuntary servitude may be used.

In answering the question "Is the draft 'necessary' for the survival of the United States?" one must first ask "What in fact is the United States?" The United States of America, like all states, is neither more nor less than a means to the ends of the inhabitants of the country. The purpose for which the United States was formed was the protection of the individual's rights from both violence done by other individuals and the violence done by governments. The Constitution was conceived of not as a limitation upon the liberty of individuals, but rather as a limitation upon the power of governments. Government is properly an instrumentality of man—it is not properly either an end in itself, much less an end above those of individual men and the protection of their rights.

If the preservation of a nation is an end which men seek and desire, then no one need compel them to preserve it. If the preservation of a nation is an end of no concern to men, then no one has a right to force them to pursue it. Men defend that which they value—and no one has the *right* to force them to otherwise, whether he acts as a private individual or as a government official.

To the extent that that instrumentality of men known as the state is good and desirable, they will fight and die to preserve it. To the extent that it is evil and corrupt, they will willingly and properly see it pass from the earth.

Amendment I was violated by requiring that people have a religious reason for refusing the draft or refusing to kill. The substitution of alternate service was still involuntary servitude, no matter how 'noble' that service was claimed to be. Broadening the conscientious objection exemption was not sufficient. No one needs to give anyone a reason why he does not want to make war.

Amend IV. The draft is a violation of "The right of the people to be secure in their persons" against an "unreasonable seizure. It is unreasonable to seize peaceful people for purposes of slavery or punishment. It is hypocritical to use slaves in a battle for freedom.

Amendment V makes the point that no one should be deprived of his life, liberty or property without due process of law. A draftee is deprived of his property because he is paid less than that which he is willing to work for, and perhaps in most cases for what he could earn in the private sector. Those favoring the draft argue that it is cheaper to raise an army that way, thereby conceding this point.

Amendment VIII prohibits "cruel and unusual punishments". The treatment of the war resisters has been very cruel (unfortunately not unusual), subjecting them to hard labor, solitary confinements, and even execution has been used by this country. Furthermore, termination of sentence does not terminate harassment, the resisters being inhibited from finding employment, education, etc. because their government records haunt them to the grave.

Amendment XIV also bears upon the Constitutionality of the draft. It states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In-so-far as the draft singles out some men and exempts all women (by definition it is call selective service), it is a clear violation of the equal protection of the law. Even a universal draft is, rather, a withdrawal of legal protection from those caught in the draft. Life and limb are not protected but are, rather endangered when subjected to conditions of war and military service. Those subjected to the Military Code of Justice do not have the full privileges and immunities of other citizens.

Amendments X and IX. The United States government does not have the legal power to do whatever it pleases, although it often tries and does. It does not have the right to even the power to grant rights to the citizens. Just as people are born with their skins, so are they already supplied with their rights when they are born (or created). The Constitution recognized that in Amendments X and IX. It would be sufficient to prove the government has no power to draft solely on either. Amend. X forbids the draft on the grounds that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Amendment IX states that, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." It is safe to assume that among the rights the Founding Fathers referred to were the self-evident ones of life, liberty and pursuit of happiness. The draft, military or otherwise, is a violation of those inalienable rights, all claims that duty calls people to save the country notwithstanding.

Those who assert that the draft is necessary to preserve the United States are implicitly stating that the United States is not worth defending for its own sake, that men are too lazy or indifferent to protect their homes and that their

values and judgments are to be imposed upon other men by force. This is antithetical to the very principles upon which America rests. Is the draft necessary for the survival of the United States? Only if the United States is so evil and corrupt and indifferent to freedom that foreign rule is preferred by its citizens to its own government. Fortunately that dark day has not yet come.

Army Lieut. General Leo E. Benade testified at the House amnesty hearings (3/13/74) that "The Dept. of Defense does not want or need draft evaders in its ranks." He is admitting that an army is more effective with willing soldiers (volunteers) and that the army can get along without forced (drafted) labor.

DID THE DESERTERS AND OTHER WAR RESISTERS BREAK THE LAW?

Those people who became involved in the struggle for justice even though they could have stayed in bed showed that they really cared.

Much of what has been said in defense of the draft evaders can be applied to the deserters. There are further arguments that can be applied to their defense.

Article I, Sec 8 states that only Congress shall have the power to declare war. Though Congress did appropriate funds for the war in Vietnam, and while this may seem to imply some consent, it hardly constitutes a declaration of war. The war was, rather, declared by the president, not by Congress, and hence was an illegal war. There is no legal basis for prosecuting anyone for refusing to obey this illegal action, therefore, the Department of Justice has no basis for prosecuting the war resisters. People can only be prosecuted for breaking a law. The resisters did not break the law.

Those who deserted from the military have legal as well as moral justification for having done so. There is no Constitutional requirement that anyone kill anyone else, let alone innocent non-combatant men, women and children.

Those who joined the military as a result of their being drafted cannot be said to be bound by any valid contract. The principle of contract implies that one is also free to not enter into a contract. The draft denied this free choice, so there is no contract.

There are those who were clearly volunteers and could, therefore, be said to be under contract to the military. However, any initiation of the use of force is immoral, whether done by an individual or by a group of individuals known as the state. (No one can prove that this country was attacked first.) The courts of this land do not honor "contracts" that require aggression against non-aggressors. If those contracts are considered null and void, there is no reason for similar contracts made by the state to be honored. States should act morally as well as individuals. Therefore, the volunteer cannot be said to be bound by any valid contract.

Duty to this country cannot be considered to be any contract because, again there is no consideration given to the free choice of the individual to say no. The only true duty that everyone owes to everyone else is a negative one, to do no harm. The person who abstains from causing harm can never be guilty of violating the rights of another and causing anyone else to be hurt or killed.

WHAT IS THE ULTIMATE AUTHORITY OF LAW?

Ultimately all laws worthy of the name must rest upon a foundation of ethical principles. The basic principles of liberty have been well stated in the Declaration of Independence and similar documents: every invididual has an inalienable right to his own life, liberty, property and pursuit of happiness, not anyone else's. No individual who has not harmed another may be compelled to act against his will. The punishment must fit the crime. Slavery, theft and murder are moral abominations and should also be considered so under the law.

All rights are necessarily individual rights. States and governments are merely collections of individual men formed for a particular purpose. They can logically possess no moral rights nor powers not possessed by their constituent members. Since no individual has a right to enslave his fellows, no individual can possibly delegate such a right to a government, even if a majority of them want to, and therefore, no government can possess such a moral right.

Governments can and do possess the power to visit men with all sorts of evils, but power and right must never be confused.

CONCLUSION

In the final analysis the United States Constitution, and only the Constitution is the law of the land. (And even that law is subject to and should be consistent with the moral law. Since the draft and war in Vietnam were blatant violations

of the Constitution, those who evaded the draft and otherwise refused to participate in the war did not break the law of the land but rather merely went contrary to the wishes of the Supreme Court justices, some legislators, and some presidents. In seeking to protect their lives from the ravages of war, the resistors were legitimately pursuing their self-interest. In refusing to succumb to the illegal threats of harm of draft boards and police, and the military, they were acting courageously to uphold the principle of the law. The war resistors do not require forgiveness for they violated neither moral principles nor anything which could logically be called the law of the land. The government officials who persecuted them do require forgiveness for they violated their oaths to uphold the Constitution and have subverted the very principles upon which the law rests. If the purpose of government is to codify and establish law for the purpose of preserving order, it is proof that those entrusted with such a noble purpose have failed. There is no greater indication that there has been a failure of "law and order" than when our governments lead us into or fail to keep us out of war. This happens because of the supposed dichotomy between that which is moral and that which is practical. There is no dichotomy in reality. The sooner we understand this principle and put it into practice, the sooner the world will learn to live in peace and harmony.

DORIS GORDON.
JARRET WOLLSTEIN.

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
Washington, D.C., March 14, 1974.

HON. ROBERT W. KASTENMEIER,
Chairman, House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR MR. KASTENMEIER: In view of the current hearing on legislation providing for amnesty, I wish to bring to the attention of the Subcommittee the position of the American Association of University Professors on this crucial issue.

In 1973 the delegates to the AAUP's Fifty-ninth Annual Meeting adopted the following resolution:

"The Fifty-ninth Annual Meeting of the American Association of University Professors welcomes the withdrawal of United States armed forces from Vietnam, the return of United States prisoners of war, and the signature of the Vietnam Peace Treaty. In this context, this Annual Meeting reaffirms the Resolution of the Fifty-eighth Annual Meeting calling for a nonretributive universal amnesty for expatriate and imprisoned war resistors and conscientious objectors. Now that United States participation in the Indochina war seems to be ending, it is more urgent than ever to heal the wounds of war and to overcome the deep divisions which the war engendered in our nation. The policy of amnesty is deeply ingrained in our history and tradition. President George Washington, upon granting a 'full, free and entire pardon' in the first act of amnesty in our history, argued, in his own words, for 'every degree of moderation and tenderness which justice, dignity and safety may permit' in the exercise of his Constitutional powers. Amnesties of varying degree have been granted by a long line of American presidents, from John Adams, Abraham Lincoln, and Andrew Johnson to Coolidge, Roosevelt, and Truman, following upon this nation's wars and rebellions. At this juncture in our history, with a long and unpopular conflict now receding, and with a spirit of reconciliation hopefully emerging in our foreign policy, it is only just that a like reconciliation be affected among our own people, and with those of our youth who conscientiously resisted or refused to participate in what they regard as a morally unacceptable war. This Meeting urges a nonretributive universal amnesty as yet another act of peace."

On November 22, 1973, acting on behalf of the Association, I issued a statement urging President Nixon to use the occasion of Thanksgiving to grant amnesty to those American youths who conscientiously resisted or refused to participate in the Vietnam War.

"On this day," I said, "when so many of our concerns are directed to unprecedented problems of conserving our national resources, we must not overlook one of the most essential of those resources: the youth of America. At no time in our history has there been a greater need for our nation to be unified, if it is to be effective in solving the problems before us. I urge President Nixon to act now to heal the wounds that still remain from the tragic war in Vietnam."

I urge you and the members of your Subcommittee to take those affirmative and constructive steps necessary to implement a policy of amnesty.

Sincerely,

WALTER ADAMS.

[Editorial, Amnesty to Bind the Wounds, the Boston Globe, submitted for the record by Congressman Robert F. Drinan]

Amnesty To Bind the Wound

On this day between the anniversary of Abraham Lincoln's birth and Valentine's Day it seems appropriate to think of an issue that involves both courage and kindness. Hearings on amnesty for those who the long Vietnam War will begin before a nine-member subcommittee of the House Judiciary Committee next month.

A decade has passed since resistance to America's role in Vietnam became manifest in demonstrations outside draft boards. More than a year has gone by since the American troops were called back. The prisoners of war have come home. Surely the time has come to deal with those other victims of an unusual and unpopular war and, as President Lincoln urged, "to bind up the nation's wounds."

It is argued that "forgetting" the defections of young men who left their country rather than go to war would open the door to anarchy. But that is to forget the climate of the '60s when national leaders were joining young people in their revulsion against American involvement in a civil war half way around the world. That is to overlook the fact that the grounds for conscientious objection were significantly broadened and changed in 1970. That is to ignore the argument that, while those who evaded the draft had the education and funds to take such action deliberately, desertion was the avenue open to the poor and inarticulate.

Many Americans who might have sought amnesty have served out long terms in jail or have settled into lives outside the country. And the number and nature of the cases that should be considered remain anyone's guess, with figures now being sought from the Departments of Defense and Justice. The five Democrats and four Republicans serving on the subcommittee chaired by Rep. Robert W. Kastenmeier (D-Wis.) have nine amnesty measures before them. Surely, somewhere between provision for overall pardon, various forms of alternate service and the establishment of a board to review each case on its merits, the means can be found to show merey here.

Statement on the Issue of Amnesty, Presented by Robert W. Nolan National Executive Secretary, Fleet Reserve Association

INTRODUCTION

Mr. Chairman and Members of this distinguished Committee, I am Robert W., Nolan, National Executive Secretary of the Fleet Reserve Association. As a retired Navy Chief Petty Officer, with twenty-one years of active service, it is my pleasure to present the views of my 94,000 Shipmates on the subject of amnesty.

The Fleet Reserve Association is a service organization composed of career enlisted personnel, and commissioned officers who have prior enlisted service, of the United States Navy, Marine Corps and Coast Guard. Approximately, forty-five percent of our members are now serving on active duty, the remainder are either in the Fleet Reserve components or fully retired.

As you may know, an enlisted member of the Navy or Marine Corps does not "retire" at the completion of twenty years of active duty service. Rather, the Secretary of the Navy may transfer him to an inactive status in the Fleet Reserve or Fleet Marine Corps Reserve respectively. The enlisted careerist continues to serve in this inactive status subject to twenty-four hour recall at the pleasure of the Secretary of the Navy. He remains in this category and receives "retainer" pay until he completes a total of thirty years service when he is placed on the retired roll and receives retired pay.

Our Association takes its name from the Fleet Reserve components of the Regular services. Originally, membership in our Association was restricted to those active duty personnel who were eligible to transfer to the Fleet Reserve components, those in the Fleet Reserve components or fully retired. Today, a Sailor, Marine or Coast Guardsman must have completed at least four years of active duty service and be obligated to serve an additional two years to join the Fleet Reserve Association.

The Fleet Reserve Association was formed in 1922 and formally chartered under the laws of the Commonwealth of Pennsylvania on November 11, 1924. We are the oldest enlisted personnel organization and we pride ourselves on truly reflecting the opinions of the career personnel of the three Sea Services. All of our members have served during wartime and the vast majority of our membership can cite military service in at least two of our nation's last four wars.

Our Association is comprised of 300 Branches throughout the United States, the Philippine Islands, and overseas at Navy and Marine Corps bases. Each Branch is entitled to at least two delegates, based on its annual membership strength, to our national convention. Proxy votes are permitted to protect the Branch's franchise. Each delegate has the privilege of the floor on any subject. In fact our convention business meetings follow the great American democratic tradition of a town hall meeting. I cite this to assure you that I am presenting a majority view.

THE ISSUE OF AMNESTY IN THE FRA

As the arguments on amnesty, both pro and con, grew into a national issue, our members began to voice their views on the subject. At the 1972 national convention in San Diego, California the National President appointed a Special National Convention Committee on Amnesty. The Committee was composed of the Regional Presidents of the Association's nine geographic regions and was chaired by the Junior Past National President. This was done to assure that every Region of the Association was represented fully.

The Special National Convention Committee on Amnesty held open hearings. Every F.R.A. member present was allowed to attend and present his views. This included members of the Ladies Auxiliary, Fleet Reserve Association, who were also in convention. The Special Committee reported their findings to the delegates on the last day of the convention.

The findings of the Special National Convention Committee on Amnesty are as follows:

1. Those Americans who chose not to serve in the Armed Forces but rather elected to evade the draft or to desert once they were in service have clearly broken the law.

2. In view of the honorable service and self sacrifice of their millions of contemporaries who served in Southeast Asia, the draft-evaders' and deserters' action is all the more reprehensible.

3. To those who now speak of mercy and amnesty of these law breakers, we remind them that American justice has always been administered with mercy and understanding. Therefore, let them pay the piper.

The Special Committee on Amnesty drafted the following resolution and presented it to the more than six hundred delegates who approved it unanimously:

"Whereas it is the duty of every American to pass on to posterity, pure and untainted, the liberty he derived from his ancestors; and

"Whereas in recent years hundreds of young Americans through personal choice and action have evaded military service in the Armed Forces of the United States thus, allowing their fellow citizens to serve in their stead; and

"Whereas these evaders of duty have failed to uphold and defend the Constitution of the United States of America and chose instead, to desert their nation; and

"Whereas, of those who chose to serve our country, many thousands have been wounded or maimed, over fifty thousand have made the supreme sacrifice and hundreds more have been captured and are now prisoners of war; and

"Whereas may no adult American enjoy freedom if he does not have the spirit to defend it: Therefore, be it

"*Resolved, by the members of the Fleet Reserve Association assembled in national convention in the City of San Diego, California, 17–21 September 1972, after due deliberation and by unanimous vote,* That these draft-evaders and deserters are not above the law therefore they should be punished under the law and under no circumstances should amnesty be granted to those who refuse to perform their military duty and fulfill their obligations as a citizen of our nation."

The Fleet Reserve Association is well aware of the fact that after the shooting stops, the American public mellows and tends to be forgiving. However, the above mandate as approved at our 1972 national convention is still the Fleet Reserve Association's position on the issue of amnesty. To have any other position would be to mock the honorable service and sacrifices of those who have served in our nation's Armed Services through all of our conflicts and especially in Southeast Asia.

Mr. Chairman, this concludes our statement and we sincerely appreciate the opportunity of presenting our strongly held views on this volatile subject. I thank you.

MARQUETTE, MICH., *March 16, 1974.*

Mr. ROBERT KASTENMEIER,
Representative,
Washington, D.C.

DEAR SIR: There has been considerable discussion in regard to the amnesty situation for deserters and draft dodgers.

I believe I have the solution. These men should be allowed to return to this country but they would have to select one of the alternatures as listed:

1. Get married immediately, have a child as quickly as possible and teach school, or
2. Serve a hitch in the national guard, or
3. Attend college for four, six or eight years on a government loan.

I realize that many people feel that the draft dodgers who left the country are more honest than those who stayed in this country but I do not believe in coddling them on this account.

The third alternative may seem quite harsh but, just as the draft dodgers who remained in this country, they could be permitted to select a school with very low scholastic standards and would not be required to learn anything.

Yours,

H. L. KIRK.

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE & FREEDOM,
OHIO STATE BRANCH,
Cincinnati, Ohio, March 15, 1974.

Representative ROBERT W. KASTENMEIER,
House Judiciary Subcommittee on Courts, Civil Liberties, and Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR SIR: In the recent Congressional hearings on amnesty several points were brought out, such as that amnesty would betray those who participated in the Vietnam war, the dead as well as the living; that amnesty would destroy the morale and discipline in the armed forces and undermine any future draft.

Before examining these statements, let us define amnesty. Amnesty means oblivion, forgetfulness, the erasing from memory. It does not mean pardon, which is forgiveness. And erasing from memory must in all fairness apply to both parties—the American people as well as the draft evaders and deserters. It is not even valid to speak of "conditional amnesty," which is a contradiction in terms: how can an individual taking advantage of such conditional amnesty by performing some kind of forced service, presumably in penance for his sin, forget or erase from memory this unhappy part of his life. To cloak such service in a euphemistic term such as "the privilege to serve the country" is mere window dressing and only clouds the issue.

Looking at these men who, in the Pentagon's spokesman's opinion would, by returning to their own country and families, betray those who took part in the war, we must concede that they were, at least the majority of them, young men who acted sincerely on principle and conscience. This position was, indeed, accepted by the Supreme Court in the two notable conscientious objector cases; U.S. vs. Seeger in 1965 and Welsh vs. U.S. in 1970. How can such people by their return to our society, either from exile, underground or prison, "betray" those who took part in a war against which there was a large resistance while it was being waged, and which is now generally regarded as misguided and immoral, and not just unpopular? We are convinced that the American people are more sensitive and mature in their moral judgment than to call the Vietnam war unpopular just because we did not win it.

As to betraying the ones who died in the war. Is this not a rather presumptious statement? The dead have their own honor and neither we, the spokeman for the Pentagon, the Government, or any Government or Veteran's organization can add to this honor or take away from it. We are, indeed, fully convinced that the dead, of all those involved, are above this petulence, vindictiveness. and self-serving sham righteousness.

While some of us are pacifists and may not believe in the institution of a standing army at all, let us say nevertheless that statements to the effect that amnesty would destroy morale and discipline in the armed forces are at best behind the

times, and not at all in step with a volunteer army, and at worst uninformed and downright ridiculous. Take, for example, the success of American industry. Long experience has clearly shown that the informed worker, to whom the reasons for certain procedures on the job are explained, who feels that he is a part of the whole, and who is not treated as a pair of hands without a brain, will much more successfully perform than somebody in forced service, unintelligible and therefore hateful to him. This is in no way connected with brain washing, which probably would not work anyway because of the certain amount of sophistication our young people have.

Speculation that amnesty would undermine a future draft were at one time called "pernicious abstractions" by President Lincoln. His use of amnesty after the Civil War had no discernable effect whatsoever on later drafts. However, there might be a further point here: most American people, and that includes Government officials, are of the opinion now that we should not have gone into Vietnam in the first place. Might not something be said here for putting a government on notice that if it plunges the nation into another war like Vietnam, it will experience trouble again. We, including the Government, must learn this bitter lesson of experience—individuals learn and so can governments, although the process is very painful; for the pupils as well as the teachers.

In the more admirable periods of our history, there have been many precedents for amnesty. General George Washington made no effort to punish wartime deserters even after his army at Valley Forge had practically disintegrated. After the Whiskey Rebellion in 1794, he again proclaimed amnesty. President John Adams granted, after the Fries Rebellion in 1799, "a full, free and absolute pardon to all and every person concerned in said insurrection." President Jackson's amnesty of June 12, 1830, pardoned all deserters provided they would *not* serve in the armed forces of the United States again.

Let us recall to mind President Lincoln's words at the time when the question of capturing Confederate leaders and bringing them to trial was discussed with his cabinet: "I hope there will be no persecution, no bloody work after the war is over. No one need expect me to take any part in hanging or killing, even the worst of them." And finally Mr. Lincoln said: "enough lives have been sacrificed."

Are we going to be lesser people than our ancestors?

Respectfully,

DOROTHEE M. MCCLAIN,
Corresponding Secretary.

THE AMNESTY DEBATE

(A Comment by Robert Pickus, President, World Without War Council)

The present amnesty discussion seems to me a tragedy; a familiar one in the war/peace public opinion process.

It is a tragedy because an issue which could help reconcile a divided country is now prolonging, in peacetime, divisions which had their origin in the war. It is a tragedy because the outcome will be no amnesty and because of the consequences of that fact on the lives of many young men.

It is a familiar scenario. The discussion is dominated by the extremes. Competing values which cry for a balanced position are instead treated in a way that polarizes. The values in the discussion that relate to progress toward ending war are ignored or subverted.

Thus, forces opposed to American power in Vietnam raise the issue as a call for unconditional amnesty without alternate service. Their argument often centers more on wringing from America a recognition of its wrongdoing in Vietnam than on bringing the men home. The values relied on are conscience, forgiveness, and reconciliation. All are distorted: the plain fact that the motives for evasion or desertion run from the most noble to simple self-interest is ignored; the enormous problem of reconciling and reuniting this country is collapsed to a concern for reconciling the evaders and deserters to the country.

A particularly egregious example of confusion is the approach of many religious liberals. Mercy or forgiveness, profound religious values, are offered as the overriding concern. Or so it appears until it becomes clear that those resting their case, they say, on those values, in fact believe no crime was committed by those who deserted or evaded. That is, for them, the key point; not forgiveness. Thus, an ostensibly religious position, examined, turns on a political perspective. Why, they ask, should men be prosecuted for refusing to napalm? But that is not the

issue. Many resisted the war as COs or in jail. The problem is not what to do with men who would not go to war, but what to do with men who in their refusal broke with this political community.

And then the No Amnesty side responds. They emphasize law, the obligations of citizenship and above all, equity, "fairness to the men who went in the place of the deserters and evaders and died". Though they speak of compassion, they in fact show little for young men now separated from their home who were also caught in the terrible vise of the Vietnam War. Committed to traditional national defense postures and, like the other side, largely concerned with defending their view of the Vietnam War, they bring equivalent passion to defending their no amnesty position. They enter the lists correcting—or sometimes substituting their own distortions for—specious arguments offered by the unconditional amnesty forces. See for example, the facts regarding amnesty precedents and estimates of the number of men involved and the distortions of these facts offered regularly in the debate.

Lost in the exchange between most present pro-amnesty forces and the Nixon administration is a statement of the goal on which a national consensus could form: i.e., a policy which enabled young men caught in the tragedy of the Vietnam War to return home *without* damaging respect for law and the obligations of citizenship.

The policy for those committed to that goal is clear: amnesty with generous and flexible alternate service provisions.

Though attacked by both the President and most organized amnesty groups, this position, when it is presented, evokes overwhelming agreement. See for example the editorials attached from two conservative papers.

But that position is seldom heard. The passion that gathers at the extremes is seldom available to an approach that balances competing values: law *and* conscience; equity *and* forgiveness; reconciliation *and* the obligations of citizenship. Our World Without War Issues Center statement does this.

We are actively introducing this position into discussions from church basements to the White House; seemingly at this point, the only organized group that is doing so. We are not offering this position as a "compromise" but as the wisest national policy and the one that best aids in strengthening understandings needed in progress toward ending war. It needs interpretation. You may find *Response to Critics* helpful in your discussions.

The WWWIC Amnesty Proposal: Response to Critics

(By Robert Pickus, WWWIC Vice Chairman; Michael Cavanaugh, WWWIC Staff)

We encounter the nine following criticisms most often in circulating the WWWIC amnesty statement. Our statement to answer them, speaking only for ourselves, should help clarify some of the most important issues raised by the WWWIC proposal.

1. We should not give special treatment to people who deliberately broke the law or voluntarily chose other political communities where the requirements of citizenship seemed more to their liking.

Those now outside the law because of their failure to fulfill responsibilities regarding military service during the Vietnam war *do* pose a special problem. It is a problem this country has faced before as were in which we were involved came to an end. There are good reasons—reasons relating to the health of our political community itself—that have led us in the past to grant amnesty for some violations of the law during war time. Decisions about military service posed an especially acute problem in the past few years because of the nature of the Vietnam War and the place of war itself in the last half of the 20th century. The imprecise legal status of the Vietnam war and the youth of so many of the men involved in evasion of military service are additional reasons for considering considering this a special kind of law-breaking.

In other words, these men acted in an extremely complex moral and political situation. Even the legal rules regarding the qualifications for C.O. status changed in the course of the war. Many very young men acted in confusion, despair and moral agony.

One can recognize all this without ascribing moral heroism to all evaders or resisters of military service. Many of the reasons that led some to choose evasion over openly stated moral resistance do not require a respectful response by the community.

Admittedly there are two principles essential to the health of our political community—equity and acceptance of the obligations of citizenship—which are endangered by some current proposals for amnesty. But those are two of the values upon which the WWWIC proposal is based.

When American participation in the Vietnam war ends, no purpose will be served by using the specter of imprisonment to keep nonviolent draft resisters out of the country if they wish to return to the obligations and rights of full citizenship. No useful purpose will be served by forcing these men to live with the consequences of decisions perhaps made in haste and ignorance; no constructive purpose will be served by making permanent exiles of the many young men who were conscientiously motivated to resist government policies, men whose commitment and moral concern could be a valuable asset to this nation.

The WWWIC proposal seeks to balance the important competing values involved. It outlines a course of action that protects the political community while seeking to reknit a deeply divided society.

2. Alternate service is a punitive condition which violates the meaning of amnesty—"to forget".

An alternate service condition for amnesty is not "punishment", but rather recognition of the fact of political obligation in a democratic society. Men who deserted, went underground, or left the country denied their obligation to this society. Men with similar beliefs accepted their responsibilities, depending on their beliefs, by going to jail, doing alternate service as CO's, or reluctantly entering the armed forces.

We do not propose alternate service as "punishment" for wrongdoing. We oppose structuring an alternate service program so as to make it a punitive requirement.

We do believe very strongly that an individual who wishes to maintain membership in a democratic political community has obligations under the law even when he believes that the community is acting immorally or unjustly. That is why we propose pardons without further conditions for men who did not break their ties with this political community and accepted the penalty of the law for their refusal to serve. That is why we would require alternate service for men who deserted, went underground, left the country, or otherwise refused their obligations to this society.

Why all this concern for law and political obligation? Because we believe that a system of law provides channels for the nonviolent resolution and prosecution of conflict. Because we believe that law breaks down without a sense of political obligation. Because we recognize that the situation in which each individual (or nation) acts without restriction on the basis of its own moral judgments is the classic definition of the state of war. Because we believe that strengthening concepts of law and political obligation and extending them to the global situation are fundamental requirements for an end to war.

While the word "amnesty" does indeed come from the Greek amoestia—translated roughly as "to forget" or "to intentionally overlook", this literary definition should not be confused with the legal definition of amnesty: "a general determination that whole classes of offenses and offenders will not be prosecuted".[1]

Amnesties may be "general" or "particular"; that is, they may apply to whole classes of offenders or be limited to special groups. They are further classified as "absolute" or "conditional"; that is, "They may impose no conditions or they may demand the performances of certain conditions before their provisions enter into legal effect".

Thus, there is nothing logically inappropriate about the general, conditional amnesty WWWIC proposes.

3. The democratic process will be destroyed if we allow people to break the law with impunity whenever they decide for themselves that a law is unjust.

We oppose the idea of selective obedience to the law. We support acts of genuine civil disobedience which are undertaken in a spirit of commitment to the society and willingly accept the penalty of the law for nonviolent symbolic disobedience. We recognize the threat posed to a nonviolent democratic political process by the erosion of a sense of political obligation. An amnesty proposal which recognizes the importance of political obligation by requiring alternate service poses no such threat in our view.

---

[1] Quotations from Encyclopedia of the Social Sciences.

On the other hand, the continued existence of a stable and reasonably unified political community *is* threatened today by extensive divisions and bitterness growing out of different attitudes toward this war. A sensitively designed and administered amnesty policy could help meet that threat without undermining the authority of the political process.

4. The policy you outline is apparently unacceptable to a large segment of those who would be affected. Many exiles would not return if alternate service is a condition for amnesty. How can your plan help achieve the "reconciliation" you speak of?

The reconciliation we seek includes, but is not limited to, reuniting these young men with the society they left or resisted. We wish to reconcile and reunite the *country*. Doing so requires reconciling many points of view, not just those of draft evaders and resisters. It is clear to us that reconciliation will not occur without an amnesty policy. But unless that policy is wisely drawn, it could itself further divide the nation.

Furthermore, reconciliation is only one of the values upon which our statement is based. We are also concerned about law and the sense of political obligation which sustains it, respect for conscientious opposition to participation in war, and a measure of equal treatment for all who faced agonizing decisions about military service during the Vietnam war. Our proposal attempts to balance reconciliation and these other values, all of which are important for those committed—as we are—to creating alternatives to war.

5. Your proposal does not spell out important details such as the length of alternate service to be required and what kinds of work will be acceptable. That leaves the door open for compulsory assignment to work camps, the Ecology Corps, and other quasi-penal or quasi-military situations—especially if Selective Service administers the program.

Our proposal is not intended to cover all the problems legislation or a Presidential proclamation must address. We offer only a framework within which we believe amnesty policy should be developed. We have, therefore, omitted many of the specifics that will have to be part of the actual policy. We assume that supporters of the approach we outline may differ on details. However, it is highly unlikely that anyone supporting the values and goals of our statement would favor the compulsory work camp approach to alternate service or ignore principled views of those opposed to military service.

For the record: WWWIC favors a broad interpretation of alternate service to cover a wide range of constructive service opportunities including work for the United Nations and other international and extranational agencies.

No one in WWWIC favors more than a two-year alternate service requirement for any of the catagories. No one favors any further condition for men who accepted the penalty of the law for an open and nonviolent refusal to serve.

6. The Amnesty Review Board you propose is unnecessary and unworkable. It would create a hopeless bureaucratic mess because of the large number of cases to be considered.

If you believe, as we do, that conditional amnesty is the best policy to pursue, an ARB becomes essential. An amnesty policy will not administer itself. Someone will designate which specific employers qualify for the program. As explained, we would favor very broad categories of acceptable work in the interest of the community. Records must be kept to certify when the conditions for amnesty have been met. Carrying out these and other necessary functions will be a major and complicated task but by no means an impossible one. We believe the creation of an Amnesty Review Board is preferable to having the Justice Department or Selective Service administer the program.

No one knows how many men are covered by the categories in our proposal. Estimates range from 10,000 to 300,000 and higher. It is even more difficult to determine how many would return and apply for amnesty. Whatever the number, we believe that the principles involved are sufficiently important to warrant the creation of an Amnesty Review Board.

7. If we could grant unconditional amnesty after the Civil War to people who had been engaged in military activity against the U.S., we can certainly grant unconditional amnesty today to men who simply refused to fight in a war almost everyone now believes was a mistake at best and a crime in the eyes of many.

The historical analogy is faulty. During the Civil War, there were two separate *de facto* political structures with conflicting laws. The people involved numbered in the millions, not the thousands. The Civil War was an internal conflict, not an

external one. Any other approach would have made reunifying the country even more difficult. In other words, the situation we face today differs radically from the situation following the Civil War.

The three most applicable historical precedents seem to us to be Twentieth Century external wars. No general amnesty was granted after World War I although some violators were pardoned ten years or so after the war ended. President Truman granted pardons to 1,500 WW II draft violators on criteria that would disqualify most of those covered by our proposals. No amnesty was granted after the Korean War.

Judged by these precedents, the WWWIC proposal is generous. It strikes an equitable balance between the needs of the men involved and the needs of the political community.

8. Granting amnesty to men who evaded the draft during the Vietnam War would set a very dangerous precedent. It would make raising an army in the future very difficult and could cripple our ability to meet military crises. Individuals could evade their responsibilities, secure in the knowledge that all would be forgiven when the danger had passed.

We can offer no assurances that the granting of so broad an amnesty as we propose will not affect the ability to conscript men for similar military operations in the future. But we should also remember that damage done to the morals and effectiveness of the armed forces (and citizen attitudes toward military service) has been primarily a consequence of the war itself.

Amnesty policy offers the occasion to consider an alternative approach to our international responsibilities, to consider our commitment to building transnational peacekeeping institutions which could bring a moral and political authority to situations like Vietnam that our unilateral military intervention lacked. Our primary concern in WWWIC is the *world* security which would result from the creation of alternatives to war. While we do not ignore the realities of world politics that lead many to insist on a fully developed American military capability in the interim, our goal is to develop alternatives to reliance on national military power for security. The Amnesty proposal we suggest includes the idea that men who evaded or refused military service could serve their community—and all others—by helping develop those alternatives in agencies like the proposed World Peace Brigade, the new U.N. Disaster Relief organization, U.N. Voluntary Service and projects like Volunteers in Asia. Special funding by interested agencies could extend such opportunities and help tie the idea of community obligation to growth toward a world without war.

9. Talk of amnesty creates the impression that draft-evaders, resisters, and deserters did something wrong. They were not wrong, the *government* was wrong in prosecuting an immoral and unjust war. The government, for once, should admit that it made a mistake and welcome back without condition those who had the moral courage to resist this war.

The morality or wisdom of U.S. participation in the Vietnam war is only peripherally relevant to a discussion of amnesty. Morally sensitive people can come to different judgments on that question. If gaining agreement on amnesty in this country requires accepting political views which see America as the only villain in the Vietnam tragedy, amnesty is very unlikely. The primary objective of a few people arguing for amnesty appears to be convicting America as a war criminal. A thoughtful and fair discussion of war guilt which is not a politically motivated attempt to whitewash or convict any of the parties to the conflict could be a very important contribution to work for an end to war. Amnesty need not await the outcome of such a discussion.

In our view, few in this society are free of the moral stain of this war. Not the administration and military, who consistently failed to grasp the political nature of the conflict and, therefore, persisted in a futile and destructive application of military technology. Not the peace movement, which consistently failed to go beyond "getting America out" to develop credible alternative policies to end the killing and, in some cases, simply transferred emotional allegiance to the other side of the war. Not the Congress, which consistently funded our military activity in Southeast Asia. Not the draft-evaders motivated by self-interest who simply wanted to avoid discomfort or inconvenience and, in many cases, acted in ways that had very little to do with opposition to war. Not even the exiles motivated by conscientious war-resistance who announced a position they believed to be moral, then gave up their best opportunity to help effect change by divorcing themselves from this political community.

In short, we question easy moral distinctions with regard to this war. We reject the characterization of the acts of *all* draft evaders and resisters as "morally

courageous". We oppose attempts to assess the morality of America's acts in isolation from the acts of the NLF and Hanoi. We question the attempt of those who, in focusing on America's guilt, would strengthen a spirit of bitterness and recrimination which amnesty policy should seek to overcome.

We do not argue that the "slate" should be "wiped clean", that all should be forgotten. Too much has happened from which we must learn if we are to avoid future Vietnams and define an international role for the United States that could help end war. But neither do we believe that exiles and deserters should be made pawns in an attempt to affix blame for the tragedy of Vietnam.

Statements of Bishops and U.S. Catholic Conferences

National Conference of Catholic Bishops, October 21, 1971 (excerpted)

In restating these recommendations, we are aware that a number of young men have left the country or have been imprisoned because of their opposition to compulsory military conscription. It is possible that in some cases this was done for unworthy motives, but in general we must presume sincere objections of conscience, especially on the part of those ready to suffer for their convictions. Since we have a pastoral concern for their welfare, we urge civil officials in revising the law to consider granting amnesty to those who have been imprisoned as selective conscientious objectors, and giving those who have emigrated an opportunity to return to the country to show responsibility for their conduct and to be ready to serve in other ways to show that they are sincere objectors.

Catholic Statement on Amnesty, Submitted by Edward McGowan, S.J., Director, Project Reconcile

National Conference of Catholic Bishops, November, 1971 (excerpted)

Finally, we recognize a clear need at this point in history to urge upon al Americans a spirit of forgiveness and reconciliation. We recall that a similarly critical moment in American history, Abraham Lincoln urged his countrymen to act "with malice towards none, with charity towards all". We invite our fellow Americans to let these words guide new efforts to heal wounds in our divided society and to unite our country in the years after the war in Southeast Asia.

We speak with special concern for those who have borne the heaviest burden of this war: the young men who chose conscientiously to serve in the Armed Forces, many of whom lost life or limb in this conflict. We wish to express our profound sympathy to the wives and families of the soldiers who have died in Southeast Asia. We express our profound concern for our prisoners of war and their families and promise our prayers for the prisoners' welfare and release. And on behalf of the returning veterans we urge strongly that the Government increase the present benefits and educational opportunities afforded by the G.I. Bill, and that it create new programs of drug rehabilitation, vocational training and job placement wherever necessary.

Those who in good conscience resisted this war are also subjects of our genuine pastoral concern. They too must be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation. Hence we repeat our plea of October 21, 1971 that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community. Surely a country which showed compassion by offering amnesty after the Civil War will want to exercise no less compassion today.

National Conference of Catholic Bishops, November 16, 1972 (excerpted)

It is vitally important that Americans now turn their attention to the task of reconciliation not only in Southeast Asia but also in our country. This war can well leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve our differences in a spirit of mutual understanding and respect.

Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spirit-

ual. Our returning veterans and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. Our sincere compassion should be extended to the families of men killed in the fighting. The dead, the maimed, and the missing in action should have constant remembrance in our prayers. Those who continue to serve in the military should also receive the moral and material support of the nation.

In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war. A year ago, we urged that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community." (Resolution on Southeast Asia, National Conference of Catholic Bishops, November, 1971). We again urge government officials and all Americans to respond in this spirit to the conspicuous need to find a solution to the problems of these men. Generosity represents the best of the American tradition and should characterize our response to this urgent challenge.

DIVISION OF WORLD JUSTICE & PEACE, U.S. CATHOLIC CONFERENCE, NOVEMBER 1, 1972

The question of amnesty for war resisters in prison or exile has been given increasing attention in recent weeks by candidates for the nation's highest office. While we welcome anything which adds to the public understanding of this important public issue, appeals to emotion and nationalistic sentiments in the heat of a political campaign can have the opposite effect and actually obscure the human and moral dimensions that should be given priority. To avoid this, we feel it is appropriate and advisable to issue this reminder that the National Conference of Catholic Bishops has taken a public stand on the amnesty issue in a statement approved by more than two-thirds of the bishops on October 22, 1971. That statement read in part as follows:

"* * * We are aware that a number of young men have left the country or have been imprisoned because of their opposition to compulsory military conscription. It is possible that in some cases this was done for unworthy motives, but in general we must presume sincere objections of conscience, especially on the part of those ready to suffer for their convictions. Since we have a pastoral concern for their welfare, we urge civil officials in revising the law to consider granting amnesty to those who have been imprisoned as selective conscientious objectors, and giving those who have emigrated an opportunity to return to the country to show their responsibility for their conduct and to be ready to serve in other ways to show that they are sincere objectors."

It is not our intention to "take sides" in the ongoing political campaign but, rather, to do what we can to keep the discussion of this extremely sensitive and emotion-charged issue on a plane worthy of democratic political discourse.

OPENING STATEMENT OF JOHN CARDINAL KROL, PRESIDENT, BEFORE NATIONAL MEETING OF CATHOLIC BISHOPS NOVEMBER 13, 1972 (EXCERPTED)

God willing, the long and tragic conflict in Southeast Asia is apparently drawing to an end. It is time for Americans to address themselves to the challenges and opportunities of reconstruction and reconciliation not only in Vietnam but here at home as well. We pray fervently that the American people will do so in the spirit of Christ himself. We pray that the animosities, hostilities, and recriminations will yield to a common effort to promote peace and brotherhood in our own country.

In this task a special measure of consideration must be given to the needs of our young people, so profoundly affected spiritually and materially by the war. Our returning veterans, the healthy and wounded, and our prisoners of war, must be given special assistance in reestablishing themselves personally and professionally in civilian life. The nation can do no less for those who respond generously to its call.

But there is also need to blend charity with justice in considering the situation of those young men who for reasons of sincere conscientious belief refused to participate in the war. A year ago, expressing our "genuine pastoral concern" for these young men, we recommended that "the civil authorities grant generous pardon to

convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community." If, as we all hope and pray, we are now moving into a period of lasting peace, it is incumbent on us as a people to approach the task of healing our internal divisions and building this peace in a spirit of generosity and mutual respect.

STATEMENT OF THE VERY REV. BERNARD FLANAGAN, ROMAN CATHOLIC BISHOP, DIOCESE OF WORCESTER, MASS., BEFORE KENNEDY SUBCOMMITTEE HEARINGS ON AMENSTY

Thank you very much, Senator. I am honored by the opportunity to speak before this committee. You have already introduced me, so I think I can omit the first paragraph of my prepared statement, and simply say that I speak here as a pastor concerned about the wounds which this tragic war has inflicted upon our country and its people, particularly upon its youth. In this capacity I am appreciative of the efforts which are being made to explore and come up with an answer to the vexing question of amnesty for those who have gone into exile, are in jail, or are living underground because of a conscientious objection to the Vietnam war.

For your information, I wish to cite statements which have been made by the Catholic Bishops of the United States with reference to conscientious objection, which is the basis on which many of these young people have either gone into prison or exile, and which to my mind is the justifying cause for now granting them amnesty. Let me just cite two or three pertinent statements of the bishops, and let me say that while I concur fully in these, that I speak here today not as a representative of the National Conference of Bishops, but as an individual, and as I said at the beginning, as a concerned pastor of souls.

In November, 1968, in their pastoral letter, "Human Life in Our Day," the bishops said:

"We therefore recommend a modification of the Selective Service Act, making it possible although not easy, for so-called Selective conscientious objectors to refuse—without fear of imprisonment or loss of citizenship—to serve in wars which they consider unjust, or in branches of the service, for example, the Strategic Nuclear Forces, which would subject them to the performance of actions contrary to deeply held moral convictions about indiscriminate killing. Some other form of the human community should be required of those so exempted."

In October of last year the bishops issued a further declaration on conscientious objection and selective conscientious objection. In this statement they reiterated their stand, particularly with respect to selective conscientious objection, and went on to say:

"We are aware that a number of young men have left the country or have been imprisoned because of their opposition to compulsory military conscription. It is possible in some cases that this was done for unworthy motives, but, in general, we must presume sincere objections of conscience, especially on the part of those ready to suffer for their convictions. Since we have a pastoral concern for their welfare, we urge civil officials, in revising the law, to consider granting amnesty to those who have been imprisoned as selective conscientious objectors, and give those who have emigrated an opportunity to return to the country, to show responsibility for their conduct, and to be ready to serve in other ways to show that they are sincere objectors."

And then just last November the bishops again returned to the question of amnesty in a resolution on the larger question of the Southeast Asia conflict. In this they urged that the "civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open, in principle, to some form of service to the community."

As a bishop who participated in the formulation and release of these statements, I concur in everything which was said. I personally and strongly support the proposal for some form of legislation or Executive order which would grant amnesty to these men and provide alternative service opportunities for them. I would further advocate that this service should not in any way be punitive but rather should be a form of service beneficial both to the individual and to the community. The men who fulfill this honorable service should, I believe, have the same GI benefits as those provided for men who serve in the armed forces. I also want to express concern, from a pastoral point of view, to simply raise the question,

for those men who have received less than an honorable discharge from the military service for various causes, which may have inflicted some injustices upon them.

We must see that the question of amnesty is a crucial and special issue at this time in our national history. As the bishops said in their 1968 pastoral letter which cited:

"The war in Vietnam typifies the issues which present and future generations will be less willing to leave entirely to the normal political and bureaucratic processes of national decisionmaking. It is not surprising that those who are most critical, even intemperate in their discussions of war as an instrument of national policy or as a ready means to the setting even of wrongs, are among the young; the burden of killing and dying falls principally on them."

If I were a younger man today, in light of my reflections on the immorality of this war which has gone on now for 10 years and has wreaked havoc beyond all proportionality for good, I believe that I could find myself in the same position in which these young men find themselves today.

Some years ago, President John F. Kennedy wrote, "Wars will exist until the distant day when the conscientious objector enjoys the same reputation and prestige as the warrior does today."

I believe that what this implies is a wholly new concept of patriotism based on preservation of the planet rather than on national defense. It is a concept which needs to be fostered and made acceptable at a point in history when it would seem that the very survival of the planet earth is at stake.

Thank you very much.

STATEMENT OF CATHOLIC BISHOP EDWARD HEAD OF BUFFALO, N.Y., JUNE 1973

I, as well as all the U.S. Bishops, am aware that a number of young men left the country or have been imprisoned because of their opposition to compulsory military conscription. It is possible that in some cases this was done for unworthy motives, but in general we must presume sincere objections of conscience, especially on the part of those ready to suffer for their convictions.

Since we have a pastoral concern for their welfare, we urge civil officials in revising the law, to consider granting amnesty to those who have been imprisoned as selective conscientious objectors, and giving those who have emigrated an opportunity to return to their country to show their responsibility for their conduct and to be ready to serve in other ways to show that they are sincere objectors.

It is vitally important that Americans now turn their attention to the task of reconciliation not only in Southeast Asia but also in our country.

This war can well leave a residue of bitterness which could poison our national life for years to come. This must not be allowed to happen. We must instead seek to resolve our differences in a spirit of mutual understanding and respect.

In a spirit of reconciliation, all possible consideration must be given to those young men, who because of sincere conscientious belief, refused to participate in the war.

A year and a half ago we urged that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community.

We urge government officials and all Americans to respond in this spirit to the conspicuous problems of these men. Generosity represents the best of the American tradition and should characterize our response to this urgent challenge.

STATEMENT OF TERENCE CARDINAL COOKE, ARCHBISHOP OF NEW YORK, APRIL 22, 1973

In a special way this Eastertime, we consider the difficult situation of the different groups of young men who refused to serve in the armed forces. Is it too much to hope that our nation's leaders will be able to balance a genuine respect for the laws of our land with true compassion in the cases of those who for sincere reasons would not serve in the military? We pray that they will discover a way for those young men to offer a fitting substitute in service and to return to their homes.

STATEMENT OF BISHOP DAVID F. CUNNINGHAM, APRIL 11, 1973

The last days of Lent 1973 are tolling a warning that this allotted time of grace is running out on us. The Holy Spirit in the Liturgy speaks to us more urgently with the words of Christ. "If you will be my disciples, take up your cross and follow me."

Discipleship with Christ, even through the Cross, envelops our souls with hope and peace. In the intimacy of this relationship we come to know the true mission of Christ. He is our Reconciler before God the Father—He is our Savior from sin and death. In Him we find the solemn pledge of resurrection given at the tomb of Lazarus, "I am the ressurrection and the life. He who believes in me and is baptized shall have everlasting life and I will raise him up at the last day."

The actions of Christ that most moved the crowds pressing about Him with awe and at times with dismay were His frequent words, "Your sins are forgiven," "Go and sin no more."

He cured all who were brought to Him, diseased, blind, deaf, crippled. His mercy and compassion moved Him to miracles for the suffering, but the greatest sickness was sin that ravaged a man's soul in a total separation from the love of His Father. To bring divine forgiveness, to take away the sins of the world as the paschal lamb of God, was why He had come into the world. His sad look of pardon moved Peter to tears; the repentance of Dismas brought a quick promise, "This day you will be with me in paradise" and from the cross He begged forgiveness not only for his executioners, but for all men through all time: "Forgive them Father for they do not know what they are doing."

Time and time again everyone of us has sought forgiveness for our sins and no matter how grave or numerous, we rose from our knees with new hope and love in the words, "I absolve you from your sins." Divine compassion has never been denied us.

It seems to me that we who have been forgiven much, should in turn be quick to forgive others. There are two cases in this reference that now cry out to the American people for such human compassion.

The people of Vietnam, both North and South, whose villages and cities were bombed, the natural growth of their sustenance defoliated, their children and parents burned with napalm, have a claim upon us at least in Christian charity for aid during their reconstruction days.

I believe firmly that our Christian faith requires us to embrace in charity and economic aid the people of both Hanoi and Saigon. The words of John have a special significance. "If a man who was rich enough in the world's goods saw that one of his brothers was in need, but closed his heart to him, how could the love of God be living in him?" (I John 3, 17).

The second case of national importance are the young men who in sincere conscience fled the country rather than participate in what to them was an immoral war. The right of conscience is a sacred, personal matter that is recognized by both the courts and legislators, particularly when it involves those who refuse to have any part in taking the life of another, even of the unborn child by abortion.

The following resolution on amnesty was passed by the United States Bishops at the annual meeting in November, 1972:

"In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war. A year ago we urged 'that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community.' We again urge government officials and all Americans to respond in this spirit to the conspicuous need to find a solution to the problems of these men. Generosity represents the best of the American tradition and should characterize our response to this urgent challenge.

"Generosity must also mark our participation in efforts to rebuild the wartorn nations and societies of Southeast Asia . . . The dramatic and successful programs of aid and reconstruction carried out by the United States following World War II provide a model for what is demanded of us now. We must be unstinting in the expending of our moral, material and technical resources and skills on behalf of the people of Southeast Asia who have suffered so grievously."

This resolution is a sincere effort by the bishops to present the cause of these young men to the American people. I strongly support it and I hope that in the spirit of Christ's compassion and reconciliation, purchased for us by His death, our people will also be compassionate and merciful.

STATEMENT OF ARCHBISHOP DANIEL E. SHEEHAN, OF OMAHA, SUMMER 1973

I fully subscribe to the Statement issued by the National Conference of Catholic Bishops in November of 1971 as follows:

"Those who in good conscience resisted this war are also subjects of our genuine pastoral concern. They too must be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation. Hence we repeat our plea of October 21, 1971 that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community. Surely a country which showed compassion by offering amnesty after the Civil War will want to exercise no less compassion today."

Resolutions and Statements of U.S. Dioceses

RESOLUTION ON AMNESTY PASSED BY THE PEORIA PRIEST SENATE FOR SUBMISSION TO THE 1974 NFPC CONVENTION, JANUARY 8, 1974

Whereas the question of who was right or wrong concerning the Vietnam war should be left aside in discussing amnesty, since any attempt to blame would shift the discussion from one of amnesty (which is essentially a "forgetting") to one of either exoneration or pardon, depending upon how the one judging views the morality of the war, and

Whereas it is impractical, if not impossible, to determine the motivation of either the war resisters or the war makers, and

Whereas in regard to the resisters, no discrimination should be made on the basis of whether the resister is a draft evader or a deserter, since the difference was often only a matter of "timing," and

Whereas any alternative service requirement would only be in the nature of a vindictive penalty, and would prove unproductive in practice because of its forced character, and

Whereas it is only the young, and in disproportionate numbers among them, the non-white and those of low economic estate, who have been and are being punished for all that has happened in our Vietnam war; Now, therefore, be it

Resolved, That we call upon the President and the Congress to grant an immediate universal and unconditional amnesty on the basis of neither commendation nor condemnation for war resisters or war makers, but basically because we value the need for reconciliation as more important than the prosecution of war-related illegal activity, and because we value the need for healing wounds above the temptation to ignore them or rub salt in them; and be it further

Resolved, That we encourage the member councils of this Federation to engage in an intensive program of education in order to sensitize their constituencies to the dimensions of the question of amnesty, including but not limited to: Setting up diocesan and parish information programs, forwarding information and opinion to appropriate executive and legislative governmental offices, raising the question in the print, audio and visual media, as well as through whatever other channels may be available.

SENATE OF PRIESTS, THE ARCHDIOCESE OF NEWARK, NOVEMBER 5, 1973

Resolved, That the Senate of Priests, conscious of its role in moral leadership and bearing in mind that neither vengenance nor vindictiveness should be borne against the sons of our own people, does endorse amnesty for all and that this endorsement be sent to the Congressional delegation of this State and to the President of the United States in the hope that amnesty might become the enacted policy of this country.

STATEMENT OF BISHOP AND PRIESTS, DIOCESE OF ROCHESTER, N.Y., FEBRUARY 1973 (EXCERPTED)

In our own country we call upon the government, business, and all citizens to give every possible consideration and assistance to the veterans of the Vietnam era in their efforts to reintegrate their personal and professional lives into civilian society.

We urge government officials and all Americans to respond to those young men who have refused to participate in this war for sincere reasons of conscience. In a spirit of reconciliation and with sincere respect for their witness to conscience we ask that amnesty be granted them.

DIOCESE OF OAKLAND, SOCIAL JUSTICE COMMISSION, JANUARY 15, 1973

The Catholic Bishops of the United States in a statement "Resolution on the Imperatives of Peace" issued after their annual meeting in November 1972, reminded the faithful, "It is vitally important that Americans now turn their attention to the task of reconciliation not only in Southeast Asia but also in our country." They reiterated their plea of 1971 "that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community." They thus provided a base for American Catholics to consider the legal, social and religious aspects of amnesty for those who in refusal of military service became draft resisters and went to jail, went underground, or emigrated to another country. The question of amnesty also includes those civilians who nonviolently broke the law and servicement, who deserted the military in protest of America's involvement in the Vietnam conflict and also those men who received less than honorable discharges because of conscientious disobedience to military authority.

It is legally possible for amnesty to be granted to all these categories, with or without conditions. The *Encyclopedia of Social Sciences* defines amnesty as "a general determination that whole classes of offenses and offenders will not be prosecuted." The technical term for amnesty as applied to those already convicted of breaking the law is "pardon." Amnesty traditionally has been granted mainly by the President under Art. II, Sec. 2 of the *Constitution*, but Congress also has the power to enact amnesty legislation.

It is likely that legal amnesty will not suffice to avert the bitterness that could poison our nation as a result of our nation's involvement in the Indochina war. Indeed, reconciliation may well be the social task of our time. For this reason the bishops urged that generosity characterize our response to the challenge of reconciling youth, returning veterans, especially the wounded and prisoners of war, the families of men who died, those who continue to serve in the military as well as those who could come under the amnesty categories mentioned above.

Living in a pluralistic society, the Christian must consider the legal and social mores of his time and bring to them an added dimension, "Judge not and you will not be judged; condemn not and you will not be condemned; forgive and you will be forgiven" (*Lk.* 6:37). A respect for the freedom of conscience of both participants and non-participants in the war, a regard for Christian values, and the need to go forward in the work for a world without war will lead Catholics to a conscientious decision in regard to conditional or unconditional amnesty. It is the judgement of this Commission that a no amnesty position is inconsistent with the Gospel values as well as with a wise governmental policy to re-unify the nation after the turbulence caused by the war.

For the message of Christ to become operative in our society, individual Christians as well as the Church as an institution must influence the American democratic process. Such action is not the Church interfering in the electroal process or power struggle, but the Church speaking for the welfare of humanity. It is hoped that Christians of the Diocese of Oakland will support a conditional or unconditional amnesty and convey this to their political leaders, and that Catholic organizations and action groups will do the same.

IOWA CATHOLIC CONFERENCE, FEBRUARY 1973

In a spirit of brotherhood, and with genuine concern that the Vietnam war be ended at home as well as abroad; that the moral and psychological wounds this war has inflicted on our society be healed, we strongly urge that amnesty be extended to all those young men who refused or ceased to fight and bear arms for United States in this tragic conflict.

In overwhelming numbers the young men in question, those who have refused to fight in this war, have done so as a matter of conscience, and their decisions have contributed to the awakening of the conscience of a whole people. At an early and

unpopular time, these young men concluded what most Americans today hold: this war is wrong. Can we now, in good conscience, punish them for having realized in anticipation what most of us now know?

We cannot cast a balance of patriotism or of sacrifice; only God can do this. We can, though, do what the American Catholic Bishops have done: urge civil officials to grant amnesty. We can urge that President Nixon do what American presidents in the past done: heal the wounds; immediately restore these young men to their full rights as American citizens.

DIOCESE OF RICHMOND PRIEST'S COUNCIL, OCTOBER 1972

We concur with the U.S. Bishops' statement on S.E. Axia of Nov. 1972 wherein they stated that "those who in good conscience resisted this war * * * must too be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation." We therefore recommend that this Priests' Council, with the USCC, actively engage in the lobbying efforts in Washington to attain a just and generous declaration of amnesty for all those men and women who have been prosecuted or face prosecution by civilian or military courts for any alleged offenses arising out of morally justifiable resistance to this War.

RICHMOND, VA., PEACE AND JUSTICE COMMITTEE, SPRING 1973

"You that used to be so far apart from us have been brought very close, by the blood of Christ. For He is the peace between us, and has made the two into one and broken down the barrier which used to keep them apart, actually destroying in His own person the hostility caused by the decree of the law." (Paul to the Ephesians)

Across America and Canada thousands of husbands, wives and families are separated and isolated because of the conscription of conscience that prevailed during the war in Indochina. Many waged that war, many in good conscience, many with no conscience. Many refused to wage that war, many in good conscience, many with no conscience.

As Christians we reverence the teaching of Jesus: "Forgive us our trespasses as we forgive those who trespass against us." (Jesus, Matthew 6)

As Roman Catholics we respect the teaching of bishops:

"We recognize a clear need at this point in history to urge upon all Americans a spirit of forgiveness and reconciliation. We recall that at a similarly critical moment in American history, Abraham Lincoln urged his countrymen to act 'with malice towards none, with charity towards all.' Surely a country which showed compassion by offering amnesty after the Civil War will want to exercise no less compassion today." (National Conference of Catholic Bishops)

"The father said: 'My son, you are with me always and all I have is yours. But it was only right we should celebrate and rejoice, because your brother here was dead and has come to life; he was lost and is found.' " (Jesus, Luke 15)

This statement is made in conjunction with National Amnesty Week by the Peace and Justice Committee of the Commission on Social Ministry of the Diocese of Richmond.

PRIEST'S SENATE OF THE DIOCESE OF SYRACUSE, N.Y., APRIL 1973

God alone knows what finally determines the actions of men, and all of us know that few of us do anything for one reason alone. Therefore we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who served in the military. Nor do we feel, as do some, that draft evaders and deserters deserve different treatment. We feel that no one should be penalized simply because his eyes were opened after entering the military service. The essential difference between the draft evader and the deserter is only a matter of timing.

As things of God cannot be rendered to Caesar, no one can surrender his conscience to the State. For centuries religious bodies have affirmed an individual's moral right to refuse participation in a particular war in which the claims of his government and those of his conscience conflict. Yet despite insistent pleadings, Congress has steadfastly refused to provide for selective conscientious objection. This failure has been a major reason for the moral crisis of tens of thousands who saw themselves with no choice but exile or prison. Amnesty would be a belated recognition of a right they should never have been denied.

Often, the armed forces uses the less than honorable discharge as a means of getting rid of those they consider "undesirable." These too, are victims of the war and should not be scarred for life.

In simple terms, we see amnesty, not as a matter of forgiveness, but as a "blessed act of oblivion," the law's own way of undoing what the law itself has done.

Amnesty, would demonstrate that America is still capable of a communal moral act. It would be bitterly ironic were we to make peace with the peoples of China and Southeast Asia but persist in vindictiveness toward those of the young generation who refused to share in the brutalities of the war.

By seeking amnesty we do not dishonor the consciences or the acts of those who fought and died. Our hope is that by abstaining from all punitive acts against those who refused to participate in it, we shall affirm a spirit of humanity that will stand the nation in good stead as it makes peace with itself and with the world.

STATEMENT ON AMNESTY BY THE PRIESTS' ASSOCIATION OF BUFFALO, APRIL 1972

The Priests' Association of Buffalo has on many occasions spoken out on the universal and absolute right to life. We feel it is necessary to speak once again to the question of life by addressing ourselves to the issue of amnesty. We see this primarily as a religious issue because it involves justice for war resisters who chose prison or exile rather than service in an immoral war. It is a religious issue because for years religious bodies have affirmed the moral right of an individual to refuse to participate in a particular war where claims of government and claims of conscience conflict.

There are thousands who have resisted the draft law; there are thousands who have deserted the military; there are thousands who have been or are no in jail. Clearly, there are tens of thousands of people in jail, in the underground, in other countries because of their opposition to the Indochina War. We feel these people have resisted the war primarily because of their religious belief in the sacredness of life.

Therefore, as religuous leaders we must uphold this belief, we must proclaim it, we must be consistent, we must say, *grant universal amnesty.*

As religious leaders, we see the need for *healing, reconciliation* between a government which has made a tragic mistake and those people of all classes and colors who are being victimized by that mistake.

As religious leaders, we emphasize that the continuing war in Indochina is unjust and immoral and, therefore, encourage all to resist it.

As religious leaders, we understand that *amnesty is not pardon* or forgiveness for resisters but freedom from any form of prosecution, release from any form of incarceration and freedom from any form of alternate service.

As religious leaders, we encourage all believers, believers in life, to pray and work for universal amnesty.

STATEMENT OF DIOCESE OF BROOKLYN COMMISSION FOR WORLD JUSTICE AND PEACE—THE AMNESTY QUESTION A REFLECTION, SPRING 1973

After the long and divisive Vietnam war, it seems strange that few political figures are taking any concrete actions to heal the bitterness caused by it. Perhaps they believe that time is the best healer and that more of it need elapse before issues like amnesty are addressed in any systematic way.

The nation's religious leaders, however, have taken a definitive stand on the issue and interestingly, they line up almost overwhelmingly on the "pro" side. In the course of the last several years, virtually every major religious group has issued a declaration calling for amnesty for those in legal jeopardy whose protest against participation in the Vietnam war was motivated by conscience.

The National Conference of Catholic Bishops, for example, in November of 1971, expressed "pastoral concern" for those who in conscience resisted the war. "They too," the Bishops argued, "must be reintegrated as fully as possible into our society and invited to share the opportunities and responsibilities of building a better nation."

For some, the refusal to serve could have been self-serving. But others certainly rejected military service because they regarded participation in the Vietnam War as wrong both for themselves and for their country. Because of an affirmative act of conscience, they continue to live either in the United States as fugitives from

the law or elsewhere in exile from family and community. Many who had accepted military service came to believe they had no option but to break ranks to resist the orders of superior officers. They too are paying a high price for their consciences.

Those who argue for amnesty believe that the war itself was a national mistake and that many young people who refused induction, or who later deserted, recognized it as such long before the rest of the nation. This recognition, they say, contributed ultimately to a national policy of disengagement. Moreover, they argue that the essence of democracy is the right to dissent and that for a long and divisive war the nation would be best served by a policy of reconciliation.

Those who oppose amnesty believe that those who broke the law must pay the price. They argue that citizens cannot pick and choose those laws they will obey and ignore those they find morally objectionable. They ask: what happens to a society of law under such circumstances? This, we note, is precisely the question put to Bishop John Wesley Lord of the United Methodist Church and Bishop Bernard Flanagan of the Diocese of Worcester, Massachusetts, at Senate hearings in early 1972. Bishop Flanagan answered this way:

". . . in the ultimate, a man's conscience has to be the criterion by which he makes his moral judgments. He is obliged, of course, to form that conscience on the basis of reflection, consideration of all the various viewpoints, the issues involved, but when he does come to that decision even though it might be against the civil law at the time, then it seems to be that we as Christians—and I'm speaking now of the Gospel—must accept his decision as one which is correct for him." Bishop Lord followed: ". . . the only way we get good laws or better laws is in determining what laws no longer serve a good and useful purpose, and must be changed, and the only way to change some of those laws is to stand in defiance of those laws, taking the penalty that such disobedience requires at the moment, but with the hope that new laws will become a part of the government * * * Law is constantly in the process of change, and without this priceless ingredient of conscience and determination to examine law, to reexamine it, to find out why it is, we would be unable to establish a new and more satisfactory code."

Another argument against amnesty is that reconciliation now dishonors those who fought in Vietnam. But, we must also ask ourselves, can the dead speak, and advise us? Does anyone presume to speak for them? Are the dead who fought in good conscience honored by retribution against those who in equally good conscience chose not to fight?

In assessing the arguments on both sides of the issue, it is important to keep in mind just what amnesty is and what it is not. The root meaning of the word is to forget—the law would decline to indict. Amnesty does not involve forgiving, but simply getting on with the business of life, with the reconstruction of the spirit of the nation with all participating—not just those who were able to agree with the national leadership or those whose opposition cost them nothing. For many, including the late Cardinal Cushing, the issue was a simple one. "Would it be too much to suggest" he asked in his 1970 Easter message, "that we empty our jails of all the protesters—the guilty and the innocent—without judging them, call back over the border and around the world the young men who are called deserters, drop the cases that are still awaiting judgment on our college youth? * * * Could we not do all this in the name of life, and with life, hope * * *?"

After the Civil War, President Lincoln begged for a policy of reconciliation. He did not receive it and as a consequence we as a nation still suffer the divisiveness of the aftermath of that war. We should really ask now if we wish to pay the price again for failing to heal the nation's wounds. More importantly, it seems clear that we ought not to allow the political implications of this issue to obscure the basic moral issue of the right of conscience to which the U.S. Bishops and other religious leaders have called attention.

Statements and Resolutions of Catholic Organizations

National Federation of Priests Councils, March 15, 1972

Whereas many young men have left this country or have gone to prison rather than be involved in an immoral and unjust war in Southeast Asia, and

Whereas the American Bishops, in their October and November, 1971 NCCB statements, urged that the civil authorities grant amnesty for convictions incurred under the Selective Service Act; Be it

Resolved, That we the delegates of the NFPC 1972 National Convention urge the President and Congress of the United States to grant an immediate and general amnesty to those who have left the country or have been imprisoned because of their opposition to compulsory military service in the Indo-China war, and that amnesty be granted on an individual basis to those who have deserted the armed forces for reasons of conscience when no other serious crime was involved; and be it further

Resolved, That this message be communicated to President Nixon, to aspirants of the presidency, and to Senators and Representatives in Congress by the President of NFPC.

Submitted by National Justice and Peace Committee.

STATEMENT OF NATIONAL ASSOCIATION OF LAITY, MARCH 6, 1972

The National Association of Laity, in consonance with the request of the U.S. Council of Catholic Bishops, petition you, Mr. President, and members of Congress, to grant universal amnesty to those who by reason of conscience are in exile, in prison, or awaiting prosecution because of their protest to the Indochina war.

We employ the word Amnesty in a universal contest, applicable to all resisters to the Indochina War (not the draft, per se). It would include all those in exile, those who went AWOL or deserted the armed forces, those who were less than honorably discharged, those awaiting prosectuion, and those who could be subject to prosecution. Our interpretation of Amnesty is founded on its rightful derivation from the Greek "amnestia. . . . a forgetting". It is not to be interpreted in the sense which has resulted from common usage; that is, "pardon for an offense". The UNIVERSAL AMNESTY advocated by the National Association of Laity is one which entails a setting aside of differences on both sides with no strings attached. The legality involved in such a proclamation necessitates initiation of universal amnesty by the government. The following is offered as a basis for such action:

1. There are historic precedents for amnestic action. Presidents Washington, John Adams, Madison, Lincoln, Andrew Jackson, Theodore Roosevelt, Coolidge and Franklin Roosevelt used the executive power granted under Article II, Section 2 of the U.S. Constitution to pardon persons charged with espionage and insurrection. Congress passed the Universal Amnesty Act of 1898.

2. War resisters conscientiously objected to the Indochina War as immoral, unjust and illegal.

3. War resisters in following their moral convictions assumed the posture of that "human tribunal" cited in the following Tablet observations of the Nuremberg Trials (Vol. 188, October 1946, pages 193–194):

"It seems to be the sole purpose of the Trial to emphatically state that when men come into power and perform actions of State, they are liable, if guilty of crimes, to be judged by their fellow humans. No soverign state or government can cloak itself in 'acts of State' or 'superior orders' thereby avoiding answering for their deeds. Such men can be called to account by a human tribunal."

4. The granting of universal amnesty would be a long stride towards closing the gap in an extremely polarized and restless United States. Mutual adjustments of feelings and attitudes are needed to bring about reconciliation. Hard line policies will continue to aggravate an already deplorable situation dividing our country.

5. The proclamation of universal amnesty would be a positive step towards alleviating an over-burdened, archaic and ineffective "criminal justice" system.

6. Proclamation of universal amnesty can only enhance the international image of the United States. By this demonstration of integrity and understanding, we will be better able to establish and implement from a forthright, unified base, programs of domestic rehabilitation and assistance in the development of other countries.

7. The loss of human potential to the United States through the acts of the war resisters is immeasurable. No country can afford to close its doors to sons and daughters who embody so many of the most important leadership characteristics; namely, the ability to make a decision, no matter how agonizing, the strength to honor this decision, no matter how grave the consequences, and the capacity for human compassion directed by a strong sense of morality.

Again we emphasize that the granting of universal amnesty must not be a token gesture or a "second chance". It must not be punitive but rather an honest attempt to achieve national harmony and a realistic effect to restore justice in our own

house. Recovery from the credibility gap will be slow but the mutual acceptance of this Proclamation would do much to create a climate of trust. and purpose The revelations of the Pentagon Papers and the testimony of the Winter Soldiers and others on the Indochina War demand that the justice inherent in universal amnesty be applied. Strong leaders must correct injustices as truths are revealed.

We of the National Association of Laity propose that you, President Nixon, address the American people to announce your Universal Amnesty Proclamation of 1972, and that the Congress pass the Universal Amnesty Act of 1972. Although either one is sufficient in itself, the issuance of both would evidence the unification and solidarity of the Executive and Legislative Branches of our government.

STATEMENT OF LITURGICAL CONFERENCE, WASHINGTON, D.C., FEBRUARY 28, 1974

We—members of the staff of the Liturgical Conference, a national association concerned with the renewal of the chruch's worship since 1940—appeal to you as a Congressional subcommittee to bring before the Congress legislation granting amnesty to all whose opposition to the war in Indochina brought them into conflict with the laws of the U.S. Government.

Thousands of our fellow-Americans are still in exile from their country, their homes and families, are still fugitives, are still in prison, because they opposed that war. Christian liturgy is a liturgy of reconciliation. Amnesty is an act of reconciliation. We do not feel we can promote the one without supporting the other.

If our society recognizes any higher moral law, if we claim to defend human conscience and its right to make moral decisions in the face of conflicting duties, then we must have a speedy amnesty. Even those who do not stand on those principles, however, can well seek amnesty for the sake of reconciliation and a new beginning.

Amnesty does not consider guilt or innocence. Amnesty looks to the future rather to the past. The United States right now needs desperately to look to the future. Before our self respect is completely lost and our government totally discredited, let us tell *all* of these people—draft refusers, deserters, exiles, the court martialed, less-than-honorable discharges, civilian protesters and resisters—that we need them to enable all of us to begin again and to build a better future.

Please!

STATEMENT OF FACULTY MEMBERS OF THE CATHOLIC THEOLOGICAL UNION, SPRING 1973

Amnesty is an emotionally laden issue that surfaces strong feelings pro and con. It elicits our feelings about how we entered the Vietnam war, and when and to what degree we felt that the war was counter-productive. Given the ambiguities of such a confusing situation we must respect each other's ethical stance.

This statement on unconditional amnesty is not meant to imply that the men who served our country by responding to the call to arms do not deserve our respect. Nor does it imply that they entered the service because they were not entirely free to reject an unjust situation and suffer the insecurity of one who refused to answer. On the contrary, we respect them as men who saw their participation in the war as their moral response to preserve our political freedoms as Americans, world citizens and members of the human family. We salute them as men willing to die for what they believed to be right and just.

It seems to us that the same understanding must be given to all who evaded the draft. We must recognize the prophetic stance of these men whose collective actions heightened the American consciousness, forced us to look again at our military commitment and did indeed exercise in argumentation to determine which category was more faithful to mankind's vision of a world without war.

At this time it seems senseless to examine the interior motives of either enlisted men or draft evaders. Our country has a tradition for unconditional amnesty. It would be a magnanimous gesture to extend our hands to those who took a different moral stance from ourselves and admit them to full citizenship without further retribution. Indeed, it is a necessary measure to end our divisiveness and restore unity to our country.

If legislators propose alternate service as a compromise to elicit the support of those opposed to unconditional amnesty, we as political realists would accept such a measure provided it was not seen as a punishment for their guilt, but as a demonstration of their commitment to our country in an era of uncertainty over a clouded and changing issue.

STATEMENT OF NATIONAL FEDERATION OF CATHOLIC SEMINARIANS, MAY 1973

We believe that the experience of our country's involvement in Southeast Asia has created wounds in the life of our society, so deep that they demand to be healed. Throughout the course of the war men arrived at the conviction that the demands of their conscience necessitated their resistance to participation in any form. Some remained in this country, and either were convicted under law or went underground. Some were forced to exile themselves from the country.

We believe that such demands of conscience may, in certain circumstances and at specific times, place a person outside the context of the law. Because of the terminology of law men who acted against the Selective Service Act have been identified as deserters. We do not believe that such a term is even descriptive of the real situation of these men.

In solidarity with and support of the National Conference of Catholic Bishops we believe that a spirit of reconciliation is incumbent on both the leaders of our government and those who have resisted, on ethical grounds, the Selective Service Act.

In the past our Government has granted Amnesty. President Andrew Johnson granted a general amnesty in 1868, in an attempt to heal the wounds of a society so recently engaged in Civil War. And after World War II President Harry Truman established an Amnesty Review Board which was the vehicle for recommendations of Amnesty. In toto there have been 35 Amnesties in our country's history—28 of which were granted by the President and 7 by Congress. We cannot accept the position of President Nixon which was most recently expressed in terms that foreclosed any considerations of Amnesty.

Because we cannot permit the wounds to go unhealed;

Because we recognize that the law is not the sole judge of such men;

Because reconciliation recognizes persons who feel no guilt because their actions were ethically motivated,

We, the undersigned, therefore call for a general unconditional Amnesty on the part of our Government for those men, both within our country and outside our boundaries, who have resisted the Selective Service Act.

STATEMENT OF THE CATHOLIC CAMPUS MINISTRY AT RUTGERS UNIVERSITY, JANUARY 1974

Reflecting on the long and divisive decade just passed, the members of the Catholic Campus Ministry at Rutgers pause on this cease-fire anniversary. That the tragedy of Vietnam has claimed literally millions of victims no one will deny. The pervasive climate of depression in this country—the sense that something is seriously wrong at the roots of our society—is but one after-effect of this war.

In addition to the dead and the maimed, in addition to the families that mourn, in addition to the confused citizens who wavered between loyalty and horror during years of TV newscasts are the "sons of our own people" who fled the war. All are victims: those who fought, those who died, those who were afraid, those who refused to fight, those who fought in good conscience, those who refused to fight in good conscience, those who fought and were afraid, those who were afraid and went away. All are victims. This war has brought no heroes.

The task of reconciliation lies ahead. From those who have the authority, those members of Congress who represent us, we ask legislation granting amnesty to all who, because of the war, breached civilian or military regulations. We ask the President of the United States to pardon those who have already been convicted of breaching those regulations.

The task of educating the American public lies ahead. We ask those who favor general amnesty to ponder the conflicting values of law and conscience. We ask those who favor conditional amnesty to consider that the issue of justice to those who fought will never be resolved. The thrust of the Gospel message, it seems to us, is that the "new covenant" is mercy. This is a hard saying. To those who oppose amnesty, we ask that they read and discuss the pros and cons of the issue.

Finally, to those who fear that general amnesty will undermine the law and preclude effective draft measures the next time, we promise to live and preach and promulgate nonviolence in order to preclude not an effective draft, but rather, "the next time." Let this amnesty be the first general amnesty, the only amnesty, the last amnesty. Let all Vietnam victims plead "no more war."

CATHOLIC PEACE FELLOWSHIP AMNESTY STATEMENT, JANUARY 1974

Almost a year after the signing of the peace accords and with the induction authority of Selective Service at least temporarily suspended, the consideration of amnesty becomes a pressing moral issue. We of the Catholic Peace Fellowship support an unconditional, universal amnesty for all those who have suffered as a result of opposition to and resistance against war. Unfortunately, countless millions have or will suffer as a result of the devastation wrought upon the peoples of this earth, but what is most saddening is that so many can never be helped by an amnesty; their lives are lost, their bodies or minds are maimed their families are ravaged, or their villages and a good part of their society are destroyed.

However, amnesty may be a factor in helping many others build better lives and a healthier society in the years to come. (And it can be an opportunity for the government and the people of the United States to take a positive step forward towards peace and a changed society.)

We see four basic groups that should benefit from an amnesty. First and most urgent are those people who are in prison now as a result of their refusal to submit to the draft or to support the military once in it. Many are also incarcerated as a result of other anti-war activities aimed at the institutions of warmaking.

The second group consists of those resisters who rather than enter the military or give any more years of their lives in its pursuits chose to leave this country for exile and now face trial or prison if they return.

A third group is made up of all those, civilian and military, who are presently awaiting prosecution or indictment for anti-draft, anti-military, or other anti-war activities. This includes the hundreds of thousands who are living underground in order not to cooperate with registration for the draft.

A fourth category are those who have already been convicted and served a sentence or are not on probation who are prevented from having full rights because of a criminal record. This should also cover those who were given less than honorable discharges for their refusal to submit and be good soldiers.

Amnesty for these four groups should mean a restoration of all civil rights beginning with the freedom to travel and including the right to vote, hold licenses, or work at a job they choose. These basic freedoms are now denied them either physically by prison bars, by exile, or by reason of their criminal record of discharge characterization. We support an amnesty that would restore these people to a place in the country, but do not feel that they need to be "pardoned" in the sense that amnesty is frequently taken. They have done nothing for which they ought to feel penitence. In fact, their opposition to war as a matter of following the higher call of conscience is an example for which we should thank them, not seek their punishment. Especially admirable are those who chose nonviolent resistance as their way of saying no to war and violence and yes to life by their whole being.

Further, we do not want to urge anyone to greater cooperation with the military now that the United States is no longer engaged in combat. If the Vietnam experience taught us anything it should be that the roots of war lie deep in the structure of nations. And even with the draft presently not inducting young men to kill or maim their brothers and sisters it continues to be an institution we cannot reconcile with our Christian principles. For conscription remains one of those intolerable seeds of war we believe must be eliminated for Christ's peace to reign.

PROJECT RECONCILE'S STATEMENT ON AMNESTY, MARCH 5, 1974

Reconcile's position is that universal and unconditional amnesty is the only reasonable and just course on this question There is no doubt that on the merits of the argument total amnesty is persuasive.

A few considerations:

1. Amnesty is a legal concept that means "forget" (and not "forgive"). Amnesty is not about commendation or condemnation and the forgetting concerns the breaking of the law, not the issues or the reasons behind the breaking of the law.

2. The concept of conditional amnesty is a contradiction in terms. Amnesty by definition is a blanket or carte blanché action which forgets that certain "crimes" were committed. It therefore involves *all* persons who committed such crimes.

3. Our memories are short. Millions of young men dodged the Vietnam war by legal means through college, medical, and occupational or other deferments. If the potential recipients of amnesty owe the country alternate service, do not the deferred? Obviously the deferred will not volunteer service, nor will they be coerced. Alternate service for one and not the other is plainly unjust.

4. On the question of dodging the war legally, we know that such deferments were readily available because of race and class. The draft system was unjust.

5. It was unjust even for the white and middle class. Most resisters were not pacifists, yet there was no classification for selective conscientious objectors. They had the "choice" of jail, exile, underground, or army.

6. Most dodgers are white and middle-class. Many of them conscientiously positioned themselves in risk to confront an illegal and immoral draft and war.

7. It's noteworthy that most deserters are white, though poor.

8. Most blacks and other minorities went into the service and served. Many however, rebelled in a variety of ways, and we now have a ½ million other than honorable discharged veterans, over half black.

9. While the young of the Vietnam generation were given a war and decided against it, so they favor their own generation with amnesty. According to the the latest Gallup poll, 55% of the age-group under 30 favor conditional amnesty to 36% against, and 47% favor unconditional amnesty to 42% against. They were right about the war and they are right on amnesty. They ought to know; its their lives we're talking about.

10. Despite what the Government statistics are, we know we are dealing with hundreds of thousands of young men, probably upwards to a million. Given the numbers, review boards are impracticable, and alternate service, already mismanaged and wasteful, is ridiculous.

For all the above reasons, plus others, universal and unconditional amnesty is the clear alternative. Since it is reasonable and just, we can assume the best in the American people to eventually appreciate this course. They did on the war; they will on amnesty. It's the only way to honor the dead of the Vietnam generation.

We must remember, however, that the project of reconciliation is only partly begun with the granting of amnesty.

Reconciliation would have us remember the enormity of the Vietnam experience, learn from it, resolve never to act so again, and ask the forgiveness of humanity. Reconciliation is hard-nosed, perhaps harder than we can manage or bear. But Americans have to try, for ourselves, for everyone.

STATEMENTS AND RESOLUTIONS OF RELIGIOUS MEN AND WOMEN ORGANIZATIONS

STATEMENT OF CONFERENCE OF MAJOR SUPERIORS OF MEN, U.S.A., MAY 28, 1973

Aware of the need to speak to value issues in American society, and mindful of our role as religious leaders within the Catholic community, we members of the National Executive Board of the Conference of Major Superiors of Men address ourselves to the critical question of amnesty.

We consider amnesty to be a positive act of compassion directed to our fellow citizens who are in prison or in exile because of their response to laws relating to military service. It is a proclamation that these persons are free to return to their families and homes, exempt from all legal prosecution for whatever actions they may have felt obliged to take regarding participation in the Vietnam war. It restores them to their full legal status of living and working in the United States as free and useful members of society.

Amnesty does not mean "forgiving"; it is not a judgement of condemnation, nor an act of condonation. It is simply an act of "forgetting," a wiping clean of the slate, an overlooking of any past legal transgression.

A. Why Amnesty Now?

We feel that the most urgent need facing the United States at this moment is the need for reconciliation. After a decade of bitter dispute over the Vietnam war, we Americans need to be brought together, to bind up our wounds, to unite in a common purpose to promote peace and justice.

Thousands of young men are currently in prison or in exile from the U.S. because of the positions which they took on the Vietnam war. Their status is both a symbol and a cause of division in our country. Amnesty would be a healing and reconciling measure designed to overlook the past and move a united nation into the future. It would restore confidence in the ability of our government and its people to foster a sense of renewed purpose, especially as we approach the 1976 Bicentennial Celebration.

B. What Kind of Amnesty?

We feel that the criterion to be used in deciding what kind of amnesty is chosen is clear: what best promotes the goal of reconcilation? We believe that a universal and unconditioned amnesty will do the most at this time to promote reconciliation.

1. It should apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service. This will affect those who have avoided the draft through going underground or leaving the country, those who have been imprisoned because of noncooperation or forms of concsientious objection not recognized by our courts, and those who have left military service or have been imprisoned because of refusal to take part in combat. (We are not speaking here of criminal offenses unrelated to the draft and the war.)

2. If it is to be a true forgetting, the amnesty must not impose any penalizing conditions, such as alternative service or recording the facts of the case in public records. Any penalizing conditions would not heal division nor restore harmony to the nation.

C. Call for Amnesty

As American Catholic religious leaders committed to justice and peace, we call upon the President and the Congress to take the necessary steps to grant such an immediate universal and unconditional amnesty.

We are aware of the political difficulties involved in such an action and of the heated debate to which the issue of amnesty gives rise. There are certainly honest differences of opinion about the desirability, feasibility, and consequences of such action. However, it is our considered opinion that the amnesty we call for is the surest path to the promotion of reconciliation in our nation.

D. Pledge for Action

In order to commit ourselves to the task of reconciliation, we are taking the following actions:

1. We are sending a copy of our Call to all the members of the Conference of Major Superiors of Men, inviting them to share this statement with their own communities, to thereby stir up discussion and reaction, and to send their response to us.

2. We are communicating our position directly to President Nixon and to all the members of the Congress.

3. We are inviting members of the Conference of Major Superiors of Men to join their signatures to ours in support of this statement on amnesty at the Annual Assembly in June, 1973.

4. We are asking the American Catholic Theological Society to commission a task force on the theological dimensions of amnesty in order to deepen the understanding and further acceptance of this act of reconciliation by Americans.

STATEMENT OF LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS, EXECUTIVE COMMITTEE, FEBRUARY 25, 1974

The executive committee of the Leadership Conference of Women Religious endorse an appeal to the conscience of the U.S.

For centuries religious bodies have affirmed an individual's moral right to refuse participation in a particular war in which the claims of the government and those of his conscience conflict. This primacy of the human conscience is a key tenet of religion.

The POWS who fought for and remained loyal to our country are recognized as men of conscience. Conscientious objectors protesting against all war are recognized as men of conscience. The young men who fled our country in order to protest against the Vietnam War should be allowed to return home as men of conscience. Yet, despite persistent pleadings (most recently by the U.S. Catholic Bishops Conference) no provision has been made for selective conscientious objection. This failure has been the major cause of the moral crisis of tens of thousands of American youth who are left with no choice but exile or prison.

Amnesty would be an act of restitution by authority that was, unjustly, not responsive. Amnesty would be a belated recognition of a right that should never have been denied. It would give us the important opportunity to "forget" something, so that we could "remember" something else. We could forget that some people technically broke a law, because we remember that those same people were sensitizing the conscience of the nation to an evil the nation was commiting. We could forget that the letter of the law calls for punishment, because we remember that there can be a moral law higher than the laws of nations. We could forget that conventional patriotism calls such men disloyal, because we remember that the highest kind of patriotism is the willingness to say "no" to one's country when it is doing wrong.

Amnesty is a well established tradition of the U.S. people. Even the Civil War ended in complete amnesty.

In granting amnesty, we could begin to affirm that thousands of young men refusing to do what they believe to be a wrong are the true lifeblood of a democratic society and that we need them back in our midst as soon as possible.

RESOLUTION OF NATIONAL ASSEMBLY OF RELIGIOUS BROTHERS, JUNE 24, 1973

Resolved, That the Brothers present and voting at the national meeting of Brothers sponsored by National Assembly of Religious Brothers support unconditional amnesty for all persons who refused to serve in Vietnam.

(Note: the vote here was roughly 4 to 1 in favor of this resolution, after a long debate.)

NAWR,
Chicago, Ill., March 5, 1974.

HOUSE JUDICIARY SUBCOMMITTEE No. 3,
U.S. House of Representatives,
Washington, D.C.

The National Assembly of Women Religious is an association representing over 3,000 individual members and 88 group members. Following is our complete statement regarding amnesty, expanding our telegram sent to you on the same date.

The National Assembly of Women Religious, aware of its commitment to a Ministry for Justice, and supportive of Pope Paul VI's theme for the Holy Year, Reconciliation, endorses a universal and unconditional amnesty for those fellow citizens in prison or exile because of their response to laws relating to military service."

S. CATHERINE PINKERTON,
Chairperson.

STATEMENT FROM THE NATIONAL COALITION OF AMERICAN NUNS

Whereas the Government of the United States of America is no longer officially at war in Southeast Asia,

Whereas many American military persons bore witness to the evil of that war by refusing to bear arms in that immoral struggle,

Whereas nonetheless these same Americans now continue to suffer exile and other heavy penalties unjustly: Therefore, the National Coalition of American Nuns calls on—

1. The President and Congress of the United States of America to accord full and unconditional amnesty to all such persons whether now suffering exile or imprisonment and other penalties in the United States of America,

2. All members of the National Coalition of American Nums to participate in this work of reconciliation through education and appropriate political action. Futhermore, the National Coalition of American Nuns considers that the Supreme Court decision denying GI education benefits to those who served as conscientious objectors is a manifest injustice. These persons who served their country in non-combatant roles deserve all GI benefits.

LAS HERMANAS,
Washington, D.C., March 4, 1974.

HOUSE JUDICIARY SUBCOMMITTEE No. 3:

Whereas our country was founded on the principles of freedom, justice and equality for all, and,

Whereas unjustified wars are a crime against the personal conscience and moral life of persons, and,

Whereas true leadership is exemplified through "hechos" or deeds, and,

Whereas our government has failed us in the above, we, Las Hermanas, strongly recommend full amnesty to all persons, who according to their beliefs felt compelled not to participate in military action against other nations. We further recommend that no derogatory record of such a stand be filed against these persons.

Unidas en accion y oracion, somos,

NATIONAL COORDINATING TEAM,
MAUAIDE JESUS YRANA O.D.N.
MARIO BARRON C.S.J.
CAIMEBTA ESPINOZA R.G.S.

STATEMENT OF NEW YORK PROVINCE ADVISORY COUNCIL OF THE SOCIETY OF JESUS, SPRING 1974

There are thousands of young men who are either in prison or in exile because of their opposition to military conscription and the Vietnam War.

In a spirit of reconciliation, the Advisory Council of the New York Province of the Society of Jesus favors total legal amnesty for all those young men whose crime was their failure to comply with the draft laws or their refusal to serve in Vietnam.

The Advisory Council urges all Jesuit communities, in concert with their students, parishioners, co-workers and other associates to undertake action (e.g., to petition the Congress to cooperate with the various groups working for an amnesty, etc.) on behalf of a general amnesty.

There are compelling reasons why amnesty should not entail the stipuation of a condition of alternate service. First of all, no such condition was ever attached to the government's granting of amnesty in the past. Secondly, there is a novel element present in the question of amnesty today. Many, if not most, of the young men (some estimate the number as high as 70,000) violated the law because they found the draft law and/or the Vietnam War contrary to their conscience. Further, many young men in exile would be forced in conscience to refuse an amnesty which contained such a condition, since it would imply a further questioning of their sincerity.

This statement is in no way intended to discredit those many young men who have served in this conflict with no less sincerity. Many of them have suffered grievously and deserve their countrymen's continuing concern, especially if they have been permanently disabled. This concern should be translated into generous and just veterans' benefits.

Finally, let us keep in mind that amnesty should not be conceived as freeing all of us from the urgent task of bringing about those reforms of law and government which would prevent from arising again in the future the cruel situation which so many of our young have had to face over the last several years.

STATEMENT OF HOLY CROSS FATHERS EASTERN PROVINCE, JULY, 1973

In the context of the love and forgiveness preached in the Gospel and in the light of the Church's teaching against war, particularly the war in Indochina, we, the religious of the Eastern Province of the Holy Cross Fathers, call upon the United States government to grant unconditionally amnesty to:

(1) all those who, because of the war, were brought into extenuating circumstances in which they breached civilian or military regulations;

(2) the half-million veterans who are now being punished by other-than-honorable discharges;

(3) all those who have been convicted or are facing prosecution, so that their records might be wiped clean;

(4) all deserters, draft violators at home and abroad, and those accused of civilian acts of resistance so that there may be a new beginning. Amnesty is not pardon. In judicial tradition amnesty blots out the offense for the sake or reconciliation and a new beginning.

An unconditional amnesty would free us for a responsible and serious effort to rebuild our divided people.

LETTER FROM WORLD JUSTICE AND PEACE OFFICE, PROVINCE OF ST. JOSEPH OF THE CAPUCHIN-FRANCISCAN ORDER, DECEMBER 1, 1971

To Richard M. Nixon, President of the United States, Aspirants to the Presidency, Our Senators and Representatives in Congress, Citizens of the United States, Young men whose lives have been dominated by the Indochina war, in the confidence that they, wherever they are, are already concerned with the making of a better America.

We, the undersigned Capuchin Franciscan brothers of the Province of St. Joseph (Indiana, Michigan, Minnesota, Montana and Wisconsin), beseech you, the President of the United States, to grant an immediate and general amnesty to those who have been forced to leave the country or who have been imprisoned because of their opposition to compulsory military conscription. We further beseech you to grant amnesty on an individual basis to those who deserted the armed forces for reasons of conscience when no other serious crime was involved.

We admit that some of the young men for whom we seek amnesty may have

had unworthy motives for their actions, but in general we must presume sincere objections of conscience. In these people we find no guilt! They should not be punished further.

Amnesty, Mr. President, must be an act of overarching statesmanship. Only you can grant it. It must be granted to reconcile this nation and to bring us together again. We urge you to act now since you have publicly declared that our combat role in South Vietnam has ended.

We, as so many other Americans, deplore the great human cost of this war and the divisions it has wreaked upon this country. We seek not to discredit the efforts of those who gave their lives, we seek only to heal the wounds of those who remain.

(70 Signatures).

LETTER FROM FRANCISCANS OF HOLY NAME COLLEGE, WASHINGTON, D.C.

HOLY NAME COLLEGE,
Washington, D.C., March 4, 1974.

To the House Judiciary Subcommittee No. 3 on Courts, Administration of Justice, and Civil Rights.

We, the undersigned, believe that an unconditional amnesty should be granted to all those who became alienated in any way from their country and families, as a result of the actions they took concerning their military involvement in the Vietnam War.

Furthermore, we request that the Congress petition the President to take the appropriate measures to effect freely and unconditionally the reconciliation of these individuals with their country and all those who love them.

LAWRENCE A. DECOSTE, O.F.M.,
(and 37 others).

STATEMENT OF THE PASSIONISTS, EASTERN PROVINCE

The National Executive Board of the Conference of Major Superiors of Men sounded the trumpet for amnesty one week ago today, on Memorial Day, and there was nothing uncertain about it. "A Religious Call for Amnesty" was loud and clear in its plea for universal and unconditional amnesty. Such an amnesty would "apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service."

Acknowledging the political difficulties involved in such an action and the heated debate to which the issue of amnesty gives rise, the CMSM Board nevertheless considers total amnesty "the surest path to the promotion of reconciliation in our nation."

Any position favoring amnesty for Vietnam war objectors has, up to now, gone against the grain of prevailing public opinion in America. The President vowed "never" to yield to the claims of amnesty and, in the glow of returning prisoners of war, popular opinion swung against the idea of amnesty. In March 1973, a poll showed 67% of Americans flatly against general amnesty.

But the Watergate affair has sprouted up and mushroomed over the country since then. In the latter part of April, Henry Kissinger admonished his fellow-citizens that it is difficult "to avoid a sense of the awfulness of events and the tragedy that has befallen people alleged to have done these things for whatever reasons." He asked "compassion" for the human tragedy and stated that, when it (the Watergate affair) is all over, we have to ask if the country can afford an "orgy of recrimination." Watergate, besides providing the country with its most compelling evidence in our time of a drastic need for national moral reform, might also generate just the right climate to stimulate a sympathetic understanding of those who have opposed the Vietnam war "for whatever reasons."

In view of the disclosures to the Ervin Committee, the reflective citizen might well wonder which is the greater vilification of the 50,000 American lives lost in Vietnam—the granting of an amnesty to those who would not serve in that war or the spreading dryrot in the office that houses the Commander in Chief? The nation has reached a crucial state in its affairs. It can ill afford the widespread disillusionment evidenced by the Gallup Poll report of May 24th which showed that popular approval of the President's performance in office had dropped to 45 percent, the lowest of his time as President, and a drop of 23 percent since January.

The National Board of the CMSM has issued a call for compassion toward those who have broken laws regarding the Vietnam conflict. And Henry Kissinger has already sounded the same call for those involved in the Watergate affair. Ultimately, the plea for compassion in either case will depend upon neither the strategy of politicians nor the findings of public opinion polls, but upon the efforts of men of good will throughout the country to bind up and heal the wounds of the nation, enabling it to live in an honorable peace with itself.

The issue of a broad amnesty must, sooner or later, confront the conscience of all Americans. The urgency for a Christian response to the call for amnesty should not be underestimated. For the Christian should be the first to recognize amnesty as an aspect of reconciliation. While amnesty as reconciliation is richly rooted in the Old Testament, it lies at the very heart of Christian faith. God's mercy toward mankind is an amnesty. He not only forgives the sinner, but his way of forgiving is a way of blotting out the sinner's guilt. Moreover, God upholds those who seek a higher righteousness. He is the advocate of peacemakers. The Christian, then, is called to give witness in his own life to the peace which is the fruit of a divine act of reconciliation. And, in view of Jesus' warning in Matthew 5:24, the duty incumbent on men to be reconciled to each other clearly rests on the reconciling act of God himself. The Christian's response to the plea for amnesty will have to go beyond the greeting of peace at Mass; nevertheless, it will have to find its beginning there in that moment which symbolizes the reconciliation of man with God and with his fellowman through Christ.

Priests and Religious, as messengers and models of reconciliation cannot run the risk of confusing moral imperative with political tactic in this matter of amnesty. By prayerfully reflecting on the whole notion of amnesty within the Christian concept of reconciliation, they will be better prepared to instruct others today as Paul the Apostle instructed the Corinthians: "God was truly in Christ, reconciling the world to himself by not reckoning against men their sins and by entrusting to us the message of reconciliation." (II Cor. 5:19). If priests and Religious are to be more than symbols of the healing power of the Gospel, they will have to bend every effort in the days ahead to bring people to a more compassionate regard for others. They will not be able to render this service unless they themselves are able to separate the issues from the dark and stifling entanglements of human bitterness, hatred and vengeance and view them in the light of charity, justice and peace. Otherwise, their counsel and ministry might easily be dismissed as an attempt on the part of the blind to lead the blind.

"A Religious Call to Amnesty" should ring well with the Passionist religious. It focuses his attention on what should be in his eyes a contemporary aspect of the Sacred Passion of Christ. But it also challenges the Passionist to rise above conflicting political attitudes and to become for others, in this critical moment of his country's history, a prophetic messenger of reconciliation. His vowed dedication to the promotion by word and deed of a deeper awareness of the meaning of the Passion for each man and for the life of the world provides a solid foundation for his attempts to bring about a healing of the wounds of his country. The "Call" of the National Board of the CMSM, then, should be considered more as a summons to pray and study, discuss and consult, in order that one might be better able to do battle with the forces that make the Call for Amnesty necessary.

The Office of Social Concerns of the Province invites all Passionists to join it in endorsing "A Religious Call for Amnesty" and in working for the reconciliation of their fellow countrymen with one another.

LETTER FROM SISTERS OF ST. JOSEPH, ST. LOUIS PROVINCE

SISTERS OF ST. JOSEPH OF CARONDELET,
St. Louis, Mo., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

DEAR SIR: As the Provincial Assembly of the St. Louis Province of the Sisters of St. Joseph of Carondelet, we are striving to live the gospel message of peace and are committed to the special task of helping to bring about reconciliation in today's world.

For several years, families, communities, and people of our nation have been divided over the rightness or wrongness of our government's military actions in Southeast Asia. Those who have experienced the greatest hostility and have been called upon for the greatest sacrifices have been the young men who had to choose whether or not to serve in our nation's military forces. Ironically, both those who served and those who refused to serve have found themselves among the chief victims of our nation's strife.

Uniting with other religious leaders in our nation, we call upon our government to take prompt and specific steps to transform the climate of hostility, generated at home and abroad as a result of its military involvement, into a climate of reconcilation and understanding. We support the resolution of the National Conference of Catholic Bishops:

"Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spiritual. Our returning veterans and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war."

We therefore urge you to grant immediately, amnesty to those who, for reasons of conscience, are in exile, in prison or in legal difficulty because of the war.

Respectfully yours,

PROVINCIAL ASSEMBLY, ST. LOUIS PROVINCE.

SISTERS OF ST. JOSEPH OF CARONDELET.
April 18, 1973.

To the President of the United States and our Senators and Representatives in Congress:

As the general social action secretariat of the Sisters of St. Joseph of Carondelet, we are striving to live the gospel message of peace and are committed to the special task of helping to bring about reconciliation in today's world.

For several years, families, communities, and people of our nation have been divided over the rightness or wrongness of our government's military actions in Southeast Asia. Those who have experienced the greatest hostility and have been called upon for the greatest sacrifices have been the young men who had to choose whether or not to serve in our nation's military forces. Ironically, both those who served and those who refused to serve have found themselves among the chief victims of our nation's strife.

Uniting with other religious leaders in our nation, we call upon our government to take prompt and specific steps to transform the climate of hostility, generated at home and abroad as a result of its military involvement, into a climate of reconciliation and understanding. We support the resolution of the National Conference of Catholic Bishops:

"Special attention must be given to the young people of our nation whom the war has profoundly affected in so many ways, material, psychological, and spiritual. Our returning veterans, and especially the wounded and the prisoners of war, must be given every possible consideration and assistance to enable them to reintegrate their personal and professional lives into civilian society. In a spirit of reconciliation, all possible consideration must be given to those young men who, because of sincere conscientious belief, refused to participate in the war."

We therefore urge you to grant immediately amnesty to those who for reasons of conscience, are in exile, in prison or in legal difficulty because of the war.

Respectfully yours,

Sister Alethea Connolly, CSJ,
Latham, N.Y.
Sister Marquita Finley, CSJ,
Minneapolis, Minn.
Sister Audrey Olson, CSJ,
Kansas City, Mo.
Sister Marilyn Schafer, CSJ,
Concord, Calif.
Sister Margaret Collins, CSJ,
St. Louis, Mo., General Coordinator.

LETTER FROM IMMACULATE HEART COMMUNITY

IMMACULATE HEART COMMUNITY,
Los Angeles, Calif. March 8, 1974.

We, the members of the Action-for-Justice Committee of the Immaculate Heart Community, believe in universal and unconditional amnesty for all those who were or are in conflict with the law for nonviolent acts of opposition to the war in southeast Asia.

Our belief is rooted in two fundamental teachings of our Christian heritage: 1) the authority and freedom of conscience, that is, the duty of individuals to judge for themselves what is right in the face of conflicting obligations; and 2) the recognition that our society is founded on a higher law than that enacted by human persons.

We understand amnesty as deliberately deciding to grant immunity to those who face prosecution, and to release those now indicted or imprisoned. It does not mean simply forgetting or forgiving, but rather blotting out the 'offense', wiping the slate clean—for the sake of reconciliation and a new beginning.

It is our conviction that none of us came out of the war without blame. There is urgent need for reconciliation between—

those who made the war, from whatever motive or intent;
those who fought the war, with whatever pride or regrets;
those who fled the war, for whatever reasons, noble or ignoble;
those who lost loved ones in the war, with whatever subsequent feelings; and
those who opposed the war, but too late and too feebly.

So, rather than preoccupying ourselves with the painful and divisive process of legal prosecution, we favor amnesty as a way of freeing ourselves for the task of post-war reconciliation and healing.

By "universal" amnesty we mean to include the estimated 10,000[1] draft resisters and military deserters who are in civil or military prison, on probation, or awaiting court action; the 80,000 draft resisters and military deserters who are underground in the United States; the 60,000 to 100,000 draft resisters and military deserters who are in exile; and the 388,000 Vietnam veterans who were given 'less-than-honorable' discharges for nonviolent offenses, often without due process.

By "unconditional" amnesty we mean that no form of alternative service should be required as a condition for granting immunity from prosecution or release from prison. Such service is punitive, and it imputes guilt to potential receipients—both of which we find unacceptable.

We cannot now restore to life our dead soldiers, nor those of the Vietnamese. We cannot undo the devastation wrought upon the lands and people of Indochina. We cannot assuage the suffering of one group of Americans by being vindictive toward another. But we can repent, and begin again—to "bind the wounds of the nation" (Abraham Lincoln) and to work for a lasting peace.

Pat Reif, IHM, Coordinator; Muriel Allen, IHM; Mary Bowler, IHM; Albertine Campbell, IHM; Carmen Cherry, IHM; Lenore N. Dowling, IHM; Vivian Gabehart, IHM; Dolores Kosinski, SFCC; Mary Louise Krug, IHM; Mechtilde Lauer, IHM; Barbara Lukaszewski, SFCC; Joyce Richards, IHM; Viola Sampert, IHM; Jean Scott; Joy Smith, IHM.

EXTRACTS FROM CATHOLIC PERIODICALS AND NEWSPAPERS

NATIONAL CATHOLIC REPORTER, MARCH 16, 1973

One year ago we editorialized on the question of amnesty. After reviewing all sides of the issues we recommended that amnesty be granted unconditionally to all young men who evaded the draft for reasons of conscience—for refusal to fight in a war they considered immoral. We have no reason now to think otherwise.

In fact, in the past year two major events have happened which make it imperative that the amnesty question be favorably resolved: the cease-fire in Vietnam and the end of the draft. One can understand the political and strategic reasons for not acting on amnesty during our active military engagement in

[1] These estimates appeared in the New York Times on January 30, 1973.

Vietnam (no matter how immoral we think that war may be). And to a lesser extent we can understand the reluctance to grant amnesty to draft evaders while other men were still being drafted. But those considerations no longer apply.

Amid all the hoopla and celebration over the return of hundreds of prisoners of war, the American people have pushed to the back of their minds the tens of thousands of young men who have gone to jail or to other countries to evade military service.

How many of them evaded for reasons of conscience and how many evaded out of cowardice, only God knows. It would be difficult for any panel or jury of persons to judge their motives. They are a loss to our nation, and it is for the good of the nation that they be returned to productive lives in the communities from which they were taken or fled.

Thus we consider President Nixon's adamant stand in opposition to amnesty unfortunate, to say the least, not only for the thousands of young men immediately affected but for the country as well. It seems almost capricious for the president to make whim national policy; we can understand his lack of sympathy for non-supporters of his war, but we are appalled by his lack of restraint and his blindness to the need now as never before for reconciliation within our nation.

Confronted with such an unbending presidential stance, which has reinforced the hardline attitude of many Americans toward amnesty, Congress will probably do nothing to secure the return of draft evaders on terms most of them will accept. (Those who acted on grounds of conscience do not want "forgiveness" for doing something they consider virtuous, nor will they accept the "punishment" of community service to expiate their non-crime.)

Thus the possibility of a general amnesty seems rather remote at this time unless the president comes to realize that amnesty means to forget, not to forgive, and decides to act in the national interest, not out of spite. Only massive public pressure will achieve this, we fear. For the sake of those who remain in exile, however, as well as for our own, we hope this pressure is applied.

EDITORIAL, COMMONWEAL MAGAZINE, MARCH 16, 1973

The nation is divided, still. Many have long been convinced that war criminals in high places were going unpunished—men like Dean Rusk, Robert McNamara, McGeorge Bundy, et. al., central characters in the Pentagon Papers. After the Christmas terror-bombing of the North Vietnamese civilian population, the number who would have added Mr. Nixon's name to this indictment increased sharply. But with the coming of an uneasy truce in Indochina, emotions have calmed. Now, with the return of the POW's, Messrs. Nixon, Rusk, McNamara, Bundy and the rest seem to be benefiting from some kind of unofficial, unspoken amnesty. All right, then, but cannot the same spirit of amnesty be extended to war resisters in jail or in exile, to draft-dodgers in Canada or Sweden, as suggested here last week?

President Nixon, predictably, now opposes the idea of amnesty, although earlier he waffled on the issue. Further, according to the Gallup Poll, seven out of ten Americans oppose unconditional amnesty. Typical is Senator James L. Buckley, Conservative-Republican of New York, who termed general amnesty "morally objectionable and historically unprecedented." It is hard to see this reasoning on either score. Beginning with Washington, who gave a "full, free and entire pardon" to those involved in the Whisky Rebellion, the following Presidents gave amnesty in one form or another: Adams, Jefferson, Madison, Jackson, Lincoln, Johnson, Grant, McKinley, Coolidge, Roosevelt and Truman. Why should we not learn from their example?

As to moral objections to amnesty, we cannot see them—quite the contrary. After all, we are not talking about the Lt. Calleys of this war, the men who slaughtered innocent men, women and children in our name. We are talking chiefly about young men trapped by the nation's failure to provide as it should have for selective conscientious objection to particular wars, men who refused to fight in a war they judged immoral. Do we not owe them honor? These men were guilty only of being "prematurely moral" on Vietnam. Rather than being sinners who need forgiveness, they reflect credit on the community; they testify to a moral sensitivity among at least some of our people of which America should be proud. All Americans are glad to see the POW's return, even knowing that many of them were captured while raining down death on the hapless Vietnamese. The exiles and deserters have also been prisoners of war, and they are the ones truly deserving of a hero's welcome.

Serious disagreement exists as to how many men would be affected by amnesty For reasons of its own the Nixon Administration seems to want to underestimate the numbers involved, and in his remarks on the subject, the President suggested that they amounted to only a few hundred. This is clearly far too low an estimate; other and more realistic calculations range from 10,000 to 70,000. To use the exact number is not the central question—one or a thousand, the principle is the same. Meeting in Kansas City last year for what was called "An Ecumenical Witness," various religious anti-war groups joined in urging "a broad, general and plenary amnesty, without any qualifications or conditions, to all those men and women who have been arrested or face possible prosectution by civilian or military courts for any alleged offenses arising out of the war, as well as the meeting of our social responsibilities to those who might refuse amnesty, to the civilian members of the resistance, and to those who have served in the military."

It is with this spirit of compassion and healing that we would identify ourselves. When Communist leader Leonid I. Brezhnev recently visited Czechoslovakia, its leaders honored his visit by declaring an amnesty for all who had fled abroad at the time Soviet troops entered that country in 1968. If an East European Communist nation can show this kind of mercy, cannot we do the same, and without. niggling conditions?

LETTERS TO THE EDITORS, SIGN MAGAZINE APRIL 1975

The question of amnesty is another divisive issue that Americans face. It is sadly ironic that now that a peace has finally been arranged with North Vietnam, Americans are finding it difficult to settle arguments among themselves. We have peace "over there," and now it seems we are going to quarrel bitterly among ourselves. Yet in a way it is understandable. For until the war is over and the prisoners of war returned, amnesty could be discussed but did not have to be faced as an immediate issue. Now that has changed.

For example, in November 12, 1971, President Nixon gave a curt, unqualified no when asked about those who, one way or another, had ducked out of Vietnam. But two months later, he said: "We always, under our system, provide amnesty, but not while there are Americans in Vietnam fighting to serve their country . . . and not while POW's are held by the enemy. After that, we would consider it." On January 31 of this year when he was asked about amnesty, he said; "Amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps or something like that, as some have suggested. The price is a criminal penalty for disobeying the laws of the United States. If they want to return to the United States, they must pay the penalty. If they don't want to return, they are certainly welcome to stay in any country that welcomes them."

The lines were drawn.

There is little point in questioning the mistaken etymology, the petulant tone, or the ambiguous classification. And there is no point in taking sides. Amnesty's traditional function has been the healing of angry wounds. And that function can only be achieved by rational and civil discourse. The only problem is that on the question of amnesty—especially with the peace settlement and the return of the prisoners of war—passions run high and divisions run deep, and we get retribution instead of reconciliation. And we get nowhere. For regardless of how we feel, the question of amnesty is not a simple question of yes or no.

Amnesty involves questions of patriotism, legality, and morality. It conjures up feelings about national interest, duty, and individual conscience. It raises the poignant and emotional question of equity: How do you justify letting draft-resisters and deserters off scot-free when others, frequently against their wishes, went off to fight and were wounded or killed? It poses questions of national security—Would it encourage mass evasions in the future? It faces complex practical questions. Should it be unconditional or tied to some kind of redemptive service? Should there be a distinction between draft-evaders and deserters from the military?

In the light of such complex issues, one wonders if amnesty is an idea whose time has not yet come. The trouble is that the question has now been raised, and it must therefore be discussed and understood. But it must be discussed before it can be understood.

One cannot help admiring the courage, the perseverence, and the patriotism of the POW's. And one cannot help being irritated at some exiles who say they feel no guilt and would not welcome any act of implied pardon and certainly not one with any conditions attached. For one cannot help feeling that those who wish

to return should be expected to respond to the political obligations that all citizens share. For while the individual conscience may instruct the political community—and it has the right and obligation to do so—it cannot direct it. In political affairs, the individual conscience must be responsible; yet it cannot be sovereign. Perhaps this is the nub of the problem. The country should appreciate the courage and convictions of sincere conscientious objectors, even though it cannot excuse them from the consequences of breaking the law. A person's conscience may tell him that the law must be disobeyed—and we cannot deny him that right—but since he lives in a society, he must accept the law's penalty. Yet this does not exclude mercy. That is the problem: choosing between a policy of reconciliation and one of rigid adherence to the law. The dead will not be honored by the hardening of our hearts. Yet evasion and obedience cannot be regarded as equal before the law. For justice, though tempered with mercy, must first be just.

We have a lot of talking to do with one another.

Father KENNEDY.

Whatever judgment we make on the thorny issue of amnesty has to be made in terms of how we view the Vietnam war now—not in terms of how we viewed it five or ten years ago. At least in my own case, this viewpoint has undergone a significant change.

During the early years of the war, I accepted rather uncritically the prevailing opinion that our involvement in Vietnam was a good thing. We were helping South Vietnam in the face of an unjust attack by the North Communists. Our motives were the best: we wanted to help a free people maintain their freedom. It was as simple as that.

I can't say that at any point I abandoned this position. It would probably be more accurate to say I've simply become more and more confused and doubtful. Now that we have left Vietnam and I can see what we accomplished with all the bombing and killing and devastation that war inevitably generates, it's hard for me to feel any longer that our involvement there was a good thing. So much pain and suffering—for what? A fragile peace that leaves most of the vital issues still unresolved.

And what about our motives? I now have all kinds of misgivings about these, as well. When the clouds of dust kicked up by political expediency, popular journalism, power struggles, special business interests, and a host of other factors that blur our vision have been cleared away, what will we see? When historians are finally able to sift all the evidence and give an objective explanation of why we fought in Vietnam, what will they say? I don't know. But my instincts tell me it will probably be painful reading for Americans.

I try to imagine myself as an eighteen- or nineteen-year-old caught in the midst of all this turmoil and confusion. It is, say, 1968. I get my letter from the draft board. What do I do?

I honestly don't know what I would do. Jail, Canada, or Vietnam all seem like options I might possibly choose. When I think back to the days when I was eighteen or nineteen, I remember a young man trying hard to figure out who he was. I certainly wasn't in good shape to grapple with any complex moral questions. It was a time in my life when I made many stupid decisions. Or perhaps it would be closer to the truth to say that most of my decisions were made for me—by family, friends, prevailing values in society, or my own peer group.

It is these two considerations that make me hope we will grant amnesty with few if any strings attached. As an adult member of society, I regret that we forced young men to make what I am sure was, for many of them, a difficult decision: to serve or not to serve. We were not asking them to defend their homes and family and country. We were not asking them to go halfway around the world to fight an undeclared war in an obscure little land for debatable goals. We asked them to go while half the world denounced the war and responsible leaders in our own country questioned its morality. And we asked this of very young men caught between the inner turbulance of late adolescence and the external confusion of the 1960's.

Life itself grants us no amnesty from bad decisions. If, in our heart, we know that we have made a choice for unworthy reasons, we have to live with that knowledge. It is no small punishment. Whether our society, in this particular instance, should try to add further a punishment is highly questionable to me.

Father MCNALLY.

The war is not over. The agony will go on in Vietnam and here. Only the mode has changed. We are condemned to get out of this historical process of revolution in Southeast Asia in the same way we got in, slowly, painfully. As Frances Fitzgerald comments in the New York Review of Books: "It will be done, if it is done by Presidential fiat, accompanied by governmental secrecy, governmental deception, further confusion of the American public, and suffering from the Vietnamese." Contrary to the inflated rhetoric of the President, the Paris Agreement does not establish peace with honor in Vietnam. It simply removes the American armed forces from active involvement in the continuing contest for the soul and bodies of a tormented people. In just effecting this, the President was carrying out the will of the American people.

So we are home. Veterans' hospitals will minister to the bodies of the wounded. Families whose men did not come home will nurture their loss in solitude in the years ahead. A task remains: How will we come to terms with the psychic wound festering in our national soul? How do we lay to rest the Vietnam war and walk away from the grave? History will pronounce its own judgement in time. Right now, we must come to terms with our troubled conscience.

What response should we make to those who refused to take part in this war? This is an important part of the healing task. Their motives were many. Some were prophetic idealists. Many of these went to prison. They chose this option because their intervision drove them to a direct confrontation with the general will. Some are simply the sad results of a pampered generation raised to reject any level of moral value beyond their physical self-interest, to refuse responsibility for the consequences of their acts. Some fled the country. Some deserted their units and their oath. What a bewildering complexity.

Into the judgement of the course of action we should take goes an equal complexity of values and practicalities. A total amnesty is just not a political possibility. If the whole country were composed of forgiving Francises of Assisi, it is not clear that total amnesty would be what is called for. Our laws offer the sincere conscientious objector alternative service with legal recourse. The nation has the right to conscript an army for its legitimate defense. The person who objects to the morality of this particular war understands that his prophetic witness involves a penalty. How, then, are we to uphold the sovereignty of law, the necessities of the common good, and yet manifest compassion and bind up the nation's wounds?

Each one of us brings to this question a set of assumptions. We differ irreconcilably about the justice of the war and its mode of prosecution. Yet we should be beyond the screaming invective of the "peace" rallies of the past and the self-deceiving propaganda of the government. Can we forgive one another? Can we at least grant the possibility of good intention? No one could watch the returning prisoners of war march down the ramp, with pride in themselves, confidence in their self-worth, and love of their country, without being moved.

We have this in common: we love what we know we as a people are capable of becoming. That kind of confidence in ourselves should enable us to reach out with generosity to offer a future to others. No one should have the door of redemption slammed in his face. After the far more divisive and ambiguous Civil War, Lincoln wrote that "the government can properly have no motive of revenge, no purpose to punish merely for punishment's sake."

The official position of the American bishops puts it best: "We recommend that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service in the community."

Father BRENNAN.

EDITORIAL, AMERICA, MARCH 18, 1972

The word "amnesty," we are told with increasing frequency these past few months, derives from a Greek word meaning to forget." It is a sad irony that one of the greatest obstacles any proposal of amnesty faces today is rooted precisely in our desire to forget, to blot from the mind the painful memories of the Vietnam war. We should like to forget about the constant bombing missions in Indochina and the weekly toll of dead bodies, including those not our own. At home, we should like to forget the punishment still to be paid by those who opposed the war by refusing to participate.

There are, we are told, more than 500 draft resisters in federal jails, about 3,900 under indictment and some 70,000 young exiles who voted with their feet against

the draft and the war. To attempt to forget them is only to nurture delusion. Like the bombed-out terrain of Indochina, the disjointed existence of these draft resisters does not cease to exist because we bear relatively little about it.

The forgetting that we need—and that the word amnesty refers to—has little in common with this switching off of the mind. It must be active and deliberate, the offspring of a strong and generous heart. Along with its twin, "forgive," amnesty aims primarily at a healing of wounds after a divisive conflict.

The practice of amnesty has had a long and distinguished career, stretching back to the Greeks in 40 B.C., and including a series of precedents in our own brief history. Five American Presidents, including Washington, Madison and Andrew Johnson, issued amnesty proclamations in connection with armed rebellions against the government. And in 1947, President Truman granted amnesty to 1,523 violators of the Selective Service Act during World War II.

If President Truman could extend forgiveness to men who violated the draft laws during a war considered just by the vast majority of Americans and their political leaders, how can we find it impossible to grant amnesty after a conflict that has divided the American conscience as much as it has devasted Indochina?

On this level the problem is essentially a simple one; we must choose between a policy of reconciliation and one of rigid adherence to the law. Certainly it is far easier to be generous after a victory, especially if we feel that truth and justice have triumphed along with our arms. But to turn national self-doubts about the Vietnam war against many of those who first questioned the wisdom of our policies would be cruel and unconscionable.

On another level, of course, the amnesty question bristles with complexities which must be sorted out. Chief among them is the task of devising, if one can, a way of determining who "resisted" the draft and who merely "dodged" it.

The objection, voiced by Selective Service Director Curtis W. Tarr among others, that amnesty would undermine the draft system by appearing to condone the actions of thousands who fled the country has a certain plausibility. But a questioning of the draft is an already accomplished fact in the eyes of many. To place all the blame for this state of affairs on the shoulders of draft resisters is unrealistic. The war itself must bear a large share of responsibility for any present disarray of the Selective Service.

Moreover, the question of conscience cannot be ignored here. The American Catholic bishops, among others, have gone on record supporting the right of selective conscientious objection, a right not recognized by existing draft regulations. Continued punishment, by exile or imprisonment, of men who followed their conscience in this matter hardly reflects glory on American justice.

The suggestion, also voiced by opponents of amnesty, that the pardoning of draft resisters would dishonor the American dead and wounded in Vietnam also misses the main point. Amnesty aims simply at reconciliation. If we wish to heal our national division, we must presume—there is nothing else we can do—that those who fought and these who refused to fight on grounds on conscience acted in good faith. The dead will not be served by the hardening of our hearts.

Another question remains: How sweeping should the amnesty be? If an amnesty proposal is to be equitable it should certainly look to all those who have refused in conscience to serve in the war. What about deserters? True, before the law, their situation differs significantly from that of draft evaders. Excluding them all from amnesty on principle, however, may fail to make cognizance of the peculiar complexities of this war. Certainly amnesty for deserters will not sit well with a great part of the nation. They will remain troubled that conscience in some cases prompted the questionable response of desertion. Still, the issue is not strict justice but pardon; some provision for deserters seems necessary.

Framing an equitable and coherent amnesty plan will clearly tax the ingenuity of our most gifted Solomons. More important, at the moment, is a commitment on the part of a large number of Americans to the goal of reconciliation through a generous use of the President's amnesty powers.

EDITORIAL OF THE LAMP/A CHRISTIAN UNITY MAGAZINE—RESOLUTION ADOPTED BY THE 8TH GENERAL CHAPTER OF THE FRANCISCAN FRIARS OF THE ATONEMENT PUBLISHERS OF THE LAMP, OCTOBER 1973

The most urgent need facing the United States at this moment is the need for reconciliation. After a decade of bitter dispute over the Vietnam war, Americans need to be brought together—to bind up our wounds, to unite in a common purpose to promote peace and justice.

Thousands of young men are currently in prison or in exile from the United States because of the positions which they took on the Vietnam war. Their status is both a symbol and a cause of division in our country. Amnesty would be a healing and reconciling measure designed to overlook the past and move a united nation into the future.

Amnesty is not pardon. In judicial tradition, amnesty forgets or blots out the offense for the sake of reconciliation and a new beginning. Let us remember in proclaiming amnesty we affirm our tradition of defense of conscience, the duty of individuals to judge for themselves what is right in the face of conflicting duties, and the foundation of our society on higher moral law.

This war has brought no heroes but only victims. Therefore let us not be vindictive toward one group to assuage the sufferings of others. While we are making peace with our enemies, let us be reconciled among ourselves.

We cannot restore to life our dead soldiers, nor undo the hurts and wounds of others. We cannot undo the devestation of the lands and people of Indochina. We can repent and work for post-war healing. An unconditional amnesty would free us for a responsible and serious effort to rebuild our divided people.

RESOLVED: that this position, which applies the Gospel message to a critical moral issue, be communicated to the President of the United States and the appropriate members of the United States Congress.

EDITORIAL, THE LONG ISLAND CATHOLIC, FEBRUARY 8, 1973

At a time in our history when Americans are burying the last soldiers killed in Vietnam and awaiting the return of their prisoners of war, it may seem foolhardy to discuss the idea of amnesty for war resisters. President Nixon, perhaps taking his cue from a Gallup Poll that showed 58 per cent of the public opposed to unconditional amnesty, stated that those who left the country to avoid military service "must pay the penalty" if they wish to return.

Mr. Nixon did not draw a distinction between those who deserted the military and those who refused service, either by going to another land or submitting to jail sentences. "Now, amnesty means forgiveness," he said. "We cannot provide forgiveness for them."

To many, the President's determination to exact the pound of flesh was appalling. They found it hard to reconcile the Administration's ability to make peace with Hanoi, Peking and Moscow with its refusal to make peace with the sons of our own society.

When the Vietnam ceasefire was announced, Cardinal John Krol, President of the U.S. Bishops' Conference, reiterated the bishops' concern for "those young men who have suffered for their refusal to participate in the war because of sincere conscientious belief."

"The Catholic bishops," said Cardinal Krol, "have urged that the civil authorities grant 'generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objections should remain open in principle to some for of service to the community.' "

President Nixon rejected this alternative. "Those who deserted must pay their price and the price is not a junket in the Peace Corps, or something like that, as some have suggested."

The Iowa Catholic Conference this week, in calling for amnesty for "all those young men who refused or ceased to fight and bear arms" in the Vietnam War, pointed to one aspect of the issue which may be caught in the craw of some of our decision-makers.

"In overwhelming numbers the young men in question, those who have refused to fight in this war, have done so as a matter of conscience, and their decisions have contributed to the awakening of the conscience of a whole people," said the conference. "At an early and unpopular time, these young men concluded that most Americans today hold: This war is wrong."

The ICC called the war a "tragic conflict" and asked whether Americans can "now, in good conscience, punish them for having realized in anticipation what most of us know."

The debate over the question of amnesty will undoubtedly continue for some time to come. At least three pieces of legislation are pending in Congress. Several Church anti-war and civil rights groups are scheduling a national conference on amnesty in Washington. An international conference of draft exiles is slated for Paris on Feb. 19.

The answer, we feel, is somewhere in between Mr. Nixon's "no forgiveness, pay the penalty" approach and that advocating unconditional amnesty. We too feel the need to help heal the wounds in this country caused by the war and reiterate our support of the alternate service concept.

Reconciliation—or as Cardinal Krol suggests, ending the suffering and hate—also means that those who opposed the war also must adopt a stance which leads to healing the wounds.

A hard-line attitude at either extreme leads to continued divisions, suffering and hate.

EDITORIAL ON AMNESTY BY FR. EDWARD J. O'DONNELL, EDITOR ST. LOUIS REVIEW

Amnesty is a Christian Response of reconciliation without pursuing the determination of right and wrong. People can look to the past and see the suffering and death of servicemen as an argument against amnesty. Instead we suggest that they look to the future and accept amnesty as a means of burying the last horrible remnants of a nationsapping war.

EDITORIAL, THE CATHOLIC REVIEW, BY ROBERT J. SIEVERS, EDITOR, MAY 10, 1972

U.S. citizens have pointed east to Berlin, to Czechoslovakia and other Eastern European countries where guarded borders and walls sealed off free movement and access and rightly said that such barriers reflect on the caliber of communist life.

A similar sort of comparison can be made in this country, where an average of 80 draft dodgers and deserters cross into Canada each week. Some simply flee military service. Others do so because they refuse to be a part of a war they feel is unjust and immoral.

There are walls, in America, boxing in young people who find no reasonable alternatives to service in a war they oppose. Some choose prison; others, exile.

The problem is one that affects more than a few. An estimated 70,000 are in the ranks of the Vietnam-era draft evaders and military deserters.

Their future is clouded by emotions and politics. And there are, besides the personal issues, the larger ones of the impact of amnesty on armed forces still fighting in Vietnam.

Two days of congressional hearings—the first in 20 years on amnesty—brought out the complexities of the problem as well as some vital considerations. It is these facts that ought to temper our own attitudes about amnesty.

Even in arguing for a deferment of amnesty until after the Vietnam hostilities, Major General Benade, deputy assistant defense secretary for military personnel policy, confessed that "it is possible to make a moving and persuasive argument on either side of this question."

Yet the history of this country on amnesty and the weight of testimony at these hearings oblige us to consider the welfare of young men who were forced to act before the rest of the nation fully grasped the issues.

Robert C. Ransom, whose son was killed in Vietnam, observed; "I would submit that the untenable position into which we forced these young men is responsible for their predicament today."

Two bishops—one Methodist and one Catholic—raised their voices for amnesty.

"We trust we have not witnessed a permanent exodus from our country but that the exiles will return to their homeland," said Bishop John Wesley Lord of Washington, D.C., United Methodist Church. "It will be a sorry day for our nation when conscience condemns."

Bishop Flanagan of the Diocese of Worcester, Mass., could not only point to last fall's statement of U.S. bishops requesting amnesty for conscientious objectors but could add his personal note:

"I personally support the proposal for some form of legislation or executive order which would grant amnesty to these men and provide alternative service opportunities for them. I would further advocate that this service should not in any way be punitive but rather should be a form of service beneficial both to the individual and to the community. The men who fulfill this honorable service should have the same GI benefits as those provided for men who serve in the armed forces."

The Constitution empowers the president to grant pardons. And they have.

George Washington granted amnesty to the farmers who staged the Whiskey Rebellion of 1794. Lincoln provided for a general amnesty to those who signed an oath of allegiance to the Union more than a year before Lee's surrender at Appomattox. Calvin Coolidge granted amnesty to 100 military deserters after

World War I. An amnesty board formed by Harry S. Truman pardoned 1,523 of the 15,805 men convicted of violating the Selective Service Act. The pardons incidentally came on Christmas Day, 1947.

The Vietnam war is different, providing many more reasons for amnesty.

Henry Steel Commanger put it well: "If the war in Southesat Asia is a mistake from which we are even now extricating ourselves, is it just that we should punish those who—at whatever cost—helped to dramatize that mistake?"

Statements and Letters of Individual Catholics

Letter of Rev. Theodore Hesburgh, C.S.C., President, Notre Dame University

University of Notre Dame,
Office of the President,
Notre Dame, Ind., March 2, 1974.

Hon. Robert W. Kastenmeier,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice House of Representatives, Washington, D.C.

Dear Congressman Kastenmeier: I write to lend my support to legislation that would grant universal and unconditional amnesty. I respectfully request that a copy of this letter be included in the record of the hearings of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary.

The deep scars of the Vietnam War remain with us. We have not overcome the frustration, division and disunity that afflicted our country as never before since the Civil War. The Vietnam War produced a cleavage of the young and the old, a cleavage between those who saw the war as an obscenity and those of the military industrial establishment and the government who prosecuted the war, with enthusiasm at times. There was perhaps never before in our history such division between the military and the civilian.

The havoc caused by the war is gruesome. Fifty thousand young men lost their lives and another half million young Americans will bear the scars of the war on their bodies. We spent $130 billion to devastate the earth and its people and millions of Vietnamese—North and South—and their neighbors—Laotians and Cambodians—were killed and maimed and wounded.

Less tangible havoc also was caused by the war. There never was a time when the most sensitive people in our society, those morally sensitive to values and to what is right, have been more alienated to their own country, many to the point of leaving it. One of the unfinished parts of the business that faces us today is to strain ourselves a little to bring back into the fullness of the society in which we live in America those who have been totally alienated from it, simply because they could not accept its values in the time of war.

There are those in prison today because they stood up and said, "I will not serve in such an immoral conflict." Some 70,000 men, more than the number killed in Vietnam, went to places like Canada and Sweden because they felt that they could not live in this country if it meant that they would have to take part in something they did not believe in. I think that it has been of great moral value to this country that so many young people have been willing to make extreme sacrifices—to go to jail or go abroad—simply because they wanted to show that they really believed something so deeply that they would put their freedom and their futures on the line for it. I think the country should cherish people like this. I think that there is so much good will and so much virtue in all of this that we should act firmly to bring about a reconciliation.

While unconditional amnesty may create some problems because of the wide divergence in the circumstances and motivation of the many different kinds of personal actions involved, I believe that the situation that created our difficulties today was so horrendous that it is best to get it totally behind us. Inequities that might be occasioned by total and unconditional amnesty would certainly be matched by other numerous inequities in the present situation. Our recent past does not do us proud, but I think that we must look to the future with love, with hope, with courage and with dedication. Great inequities have been committed, and it is likely that they can be removed only by great generosity and magnanimity.

Sincerely,

(Reverend) Theodore M. Hesburgh, C.S.C.,
President.

STATEMENT ON AMNESTY SIGNED BY DOROTHY DAY AND REV. THEODORE M. HESBURGH, CSC AND 47 OTHERS, OCTOBER 1973

We ask again that the public and the government face the fact that for all that has happened in our Vietnamese war, only men who are young have been or are being punished; and that in disproportionate numbers these men are non-white and from low economic estate.

We are speaking of those men who are or were imprisoned for refusing induction; of those who expatriated themselves before or after induction or who have lived underground; and of those given "less-than-honorable" or other discriminatory discharges from the military.

We believe that justice—justice that is symmetrical in its equal treatment of all citizens—requires an unconditional amnesty, pardon, or fair restitution for all men who are charged with, may be charged with, or have been convicted for offenses rising out of their refusal to participate in the military action in Southeast Asia, or for offenses against military law while doing so.

A country which has found only a lieutenant guilty for My Lai, has found no one legally culpable for the massive deception revealed in the Pentagon Papers and in the disclosures of later lawlessness and deceit in the war's conduct, has seen its honor sacked by Watergate and similar affairs—such a country so long as it may belong to a just people cannot now impose its penalties only on these young and powerless men. That cannot be fair, cannot be in keeping with our best ideals.

Our war, we trust, is over. The nation now has much to do, much that it can do only as a united people. There is too little mutual trust among us, too much that is corrosive of hopes and spirits.

A general and unconditional amnesty would be a simple and clear act. It would be a sign that we want to live at peace with each other, that we want to end within ourselves the awful divisions caused by the war, that we want to get on with the work of making this a better land.

Who can be opposed to such an act? Can the dead speak, and advise us; or can any speak for them? Would we really want to turn to parents of the dead and set them speaking against each other, some urging amnesty and some opposed?

Are veterans (including former prisoners of war) opposed? They appear divided, many for, many against, many indifferent. Although interest and weight do attach to the views of the veterans of this war who were themselves enlisted men, even they, in the tradition of our civil society, have now to advance those views as citizens, and not as a distinct group.

Can Congressmen and members of the administration, both present and former ones, who put us into the war and who kept us in it so long, have it in their hearts to absolve themselves while they hurt these young men?

Can those Congressmen who opposed the war, in the way the public empowered them to do, want to hurt those powerless men who opposed the war in the only ways they could or knew how, men who in the process helped create and sustain that public disgust with the war which finally gave some success to Congressional effort to end it?

We believe that Congress and the President are, in fact, fully free to act for amnesty, and that they cannot rightfully claim to be held back by constituents' pressures. We believe amnesty, as was segregation in the South, is an issue wherein statesmen would not trade on fears but can, and therefore should, lead. We believe that the people will respond helpfully to forthright leadership, as did people in the South when segregation was outlawed.

We believe that if Congress or the President will give the American people the opportunity to be generous and just, the nation will be so. We ask for that opportunity.

Does this nation, that was established to "form a more perfect union" and to "insure domestic tranquility," not want to heal itself? Do we not want to take this chance on justice?

There are few acts a government can decide upon that clearly and immediately benefit individuals; amnesty would be one. We think it would be even more. We would be saying to ourselves that we now put the Vietnam war behind us, with its terrible freight of bitterness and recrimination, and of corruption and brutality too. We would signal a decisive turning away from the darkness of the war years, and toward rebuilding and restoring and healing, both here and, as we are morally bound to do, in Indo-China. We also would be affirming to ourselves that America has no time or need for vengeance against ourselves, and especially not against our youth. We would, instead, be welcoming the return, as free members of a freer society, of young men who can give much to the future—theirs and ours and our country's.

STATEMENT OF FATHER RICHARD ARMSTRONG, M.M., DIRECTOR, THE CHRISTOPHERS, FEBRUARY 27, 1974

I urge the Congress of the United States to grant an unconditional amnesty to the hundreds of thousands of Americans who are in need of it because they opposed our nation's involvement in the longest, most bitterly divisive foreign war of its history.

It is now time to bind up the wounds of that war, and to move ahead with the task of constructing a more humane global and domestic society—a task we have scarcely begun.

Equity no less than compassion ought to move us to forget the painful divisions of the past, to grant the kind of amnesty which offers the best hope of reaching a true spirit of reconciliation in our country.

Unconditional amnesty for those who need it is a vital first step towards that reconciliation.

STATEMENT OF JESUIT SECONDARY EDUCATION ASSOCIATION, REV. EDWIN J. MC DERMOTT, S.J., PRESIDENT, MARCH 1974

March 7, 8 and 11 may be very tense days in the Nation's Capital; they may become days that history will record as Days of Reconciliation. On the Hill, hearings will take place before the House Judiciary Committee concerning those Americans who did not comply with the Selective Service System or who deserted the Armed Forces of the United States. One mother will be there to testify and she will describe her two sons: one made her a Gold Star Mother; the other is in exile in Canada. Militarists will testify; pacifists will testify. The discrepancies of these hearings is a "sign of our times." Who are these people? With at least four possible positions to take, where do we stand?

Who are involved? Numbers are hard to come by but these are circulated.

Draft Refusers: 7,400 convicted by the Federal Court; 39,000 referred to the Department of Justice for prosecution; 5,700 with cases pending.

Deserters: 32,000 still at large; about 100,000 deserted during the Vietnam war.

Exiles: about 35,000 in Canada and a few other countries.

Court-Martial Convictions: 550,000 men were convicted by military courts of offenses that would not be crimes in a civilian context (e.g. AWOL, disobedience).

Less-than-honorable discharges: about 450,000 veterans of Vietnam era.

Where do we stand as a Christian? We can (1) refuse to consider amnesty, (2) call for conditional amnesty, (3) call for unconditional amnesty, (4) do nothing.

1. Refuse to consider amnesty. This is the stance Mr. Nixon has publicly repeated. Others refuse to consider amnesty also and give reasons: such men violated the law and if this act is unpunished the whole fabric of legal sanction in the United States will be pulled to shreds; they had opportunities to request the status of conscientious objectors; when these men deserted their country, other young men had to die in their place.

2. Conditional amnesty: Mr. Roybal (D-Cal) introduced a bill "to offer amnesty under certain conditions to persons who failed or refused toreg ister for the draft or to be inducted into the Armed Forces." He wanted the draft resisters to agree "to serve for a period of two years in public service." Those who want "conditional amnesty" seem to want to protect four values: political obligations, respect for conscience, equity, and reconciliation.

3. Unconditional amnesty: This position has been worded by Ms. Abzug (D–NY): "To exonerate and to provide for a general and unconditional amnesty for certain persons who have violated or are alleged to have violated laws in the course of protest against the involvement of the U.S. in Indochina." Legislators who seek unconditional amnesty declare that the Congress and/or the President have power to declare this amnesty (U.S. Const. Art. II, Sec. 2); they urge it as the only practical way of reconciling our Nation; they see any other approach as an eye-for-eye retribution or even vengeance. They put absolute amnesty ahead of nationalism. They propose it as the radical lesson of love from the Gospel.

4. *Do Nothing.* "Leave it up to others who know more about the problem.'

Where do other people stand?

American Bishops, November 16, 1972 (near the end of Vietnam involvement): "It is vitally important that Americans now turn their attention to the task of reconciliation. . . . This war can well leave a residue of bitterness which could poison our national life for years to come. . . . All possible

consideration must be given to those young men, who, because of sincere conscientious belief, refused to participate in the war. A year ago, we urged 'that the civil authorities grant generous pardon of convictions incurred under the Selective Service Act, with the understanding that sincere conscientious objectors should remain open in principle to some form of service to the community.'"

Iowa Catholic Conference, February 16, 1973: "We strongly urge that amnesty be extended to all those young men who refused or ceased to fight and bear arms for the U.S. (They) have done so as a matter of conscience, and their decisions have contributed to the awakening of the conscience of a whole people. Can we now, in good conscience, punish them for having realized in anticipation what most of us now know? . . . We urge: heal the wounds, immediately restore these young men to their full rights as American citizens."

Conference of Major Superiors of Men (CMSM), May 28, 1973: "We consider amnesty to be a positive act of compassion directed to our fellow citizens who are in prison or in exile. . . . Amnesty does not mean 'forgiving'; it is not a judgment of condemnation, nor an act of condonation. It is simply an act of 'forgetting,' a wiping clean of the slate, an overlooking of any past legal transgression. . . . We believe that a *universal* and *unconditional* amnesty will do the most at this time to promote reconciliation. It should apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service. This will affect those who have avoided the draft through going underground or leaving the country, those who have been imprisoned because of non-cooperation or forms of conscientious objection not recognized by our courts, and those who have left military service or have been imprisoned because of refusal to take part in combat. (We are not here speaking of criminal offenses unrelated to the draft and the war.)"

Diocese of Oakland, Social Justice Commission, January 15, 1973: "A respect for the freedom of conscience of both participants and non-participants in the war, a regard for Christian values, and the need to go forward in the work for a world without war will lead Catholics to a conscientious decision in regard to conditional or unconditional amnesty. It is the judgment of this Commission that a no amnesty position is inconsistent with the Gospel values as well as with a wise governmental policy to re-unify the nation after the turbulence caused by the war."

STATEMENT OF REV. ANTHONY CAPIZZI, S.J., CAMPUS MINISTER, ST. JOSEPH'S COLLEGE, PHILADELPHIA, APRIL 6, 1973

It is now time that we ensure safe passage home for another group of POWs: the men who made the principaled and moral decision to resist the war effort and now make up the nearly 200,000 draft resisters and military deserters in civil and military prisons, in exile in other countries, and who are underground in the United States.

The Nixon Administration has talked of making a healing peace. Whether we agree or not with the moral position of war resisters, there can be no healing of this country's wounds without a general amnesty. Amnesty would bring back into useful citizenship thousands of exiled young persons, it would end the emotional and economic suffering of the families of those who are in prison or exile, or otherwise subject to prosecution.

For those of us who have condemned the war as an outrage there is a clear responsibility to support the men whose opposition to the war led them to resist military service. Those who do not agree that the war was immoral and illegal must consider the need to reunite the country.

Amnesty is a tradition in American society which has helped to preserve this union of diverse people for two centuries, from the limited amnesty declared by the Continental Congress after the Revolutionary War through the dictum of Abraham Lincoln following the Civil War—"with malice toward none, with charity for all."

We urge that no conditions whatever be attached to amnesty and that neither alternative nor national service, nor any formal declarations of wrongdoing be required. The majority of war resisters did what they believed to be right. Their convictions have a reasonable basis in law, namely the Nuremburg Principles of 1950, of which the United States was one of the principal architects and parties. Principle VII states the cooperation in an unjust war or cooperation in violating the laws of warfare itself a crime under International Law. Thus, most war resisters, with a general or specific knowledge of these Principles have simply

been fulfilling what they believed was their obligation to resist unlawful acts of war. While it may be true general amnesty will include a few persons who did not act out of conscience, the alternative, a case by case review, would be far worse. Such a review would end up punishing those who are unacceptable to the people doing the review and would inevitably discriminate against the poor, the less articulate, and those with less pull.

In 1868, when a total amnesty was granted by President Johnson after the Civil War, he quoted Lincoln: "I hope there will be no persecutions, no bloody work after the war is over." To continue to punish and prosecute the young men who conscientiously opposed the war will further divide us as a nation. An amnesty would be a healing and reconciling act, enabling the return of many more young men who have been separated from us by the war.

LETTER FROM THE QUAD-CITY CENTER FOR THE STUDY OF PEACE & NONVIOLENCE

QUAD-CITY CENTER FOR THE STUDY
OF PEACE & NONVIOLENCE,
Davenport, Iowa March 11, 1974.

To Members of the U.S. House of Representatives Judiciary Committee.

We urge that Congress not wait for Executive action on amnesty, but act promptly to provide unconditional relief for the hundreds of thousands of young Americans who are facing criminal or administrative penalties for non-violent acts of evasion or resistance to the draft, to the military or to the war in Southeast Asia.

After counseling hundreds of draft age Americans regarding their rights under the Selective Service System, from 1967 to 1972, we are overwhelmingly convinced that these young men were acting from conscience positions. Their fault, if any, was that they discovered the terrible mistake of Vietnam before most other Americans did.

In a larger sense, unconditional amnesty can be a much needed act of national reconciliation, healing the wounds of a war which has seriously torn apart the very fabric of American society, at home as well as abroad. If our legal system and our court procedures cannot be responsive to matters of conscience and to new knowledge and new facts, we may be condemned to live through more Vietnams and more Watergates. So to make the law of our land an unnatural absolute is to make captives and victims of us all.

Unconditional amnesty can mean, then, that we the people who make our laws readily assume the responsibility of adjusting those laws and their application to the higher demands of conscience and personal truthfulness. Judgment in the absolute sense we can leave, with confidence, to God.

Father JOHN S. SMITH, *Director.*

STATEMENT OF ABBOT RAPHAEL WALSH, O.S.B., OF OMAHA, SUMMER 1973

Our Country is in need of some gesture of magnanimity to bring us together again. Skepticism and depression are everywhere because of the Vietnam War and Watergate. We need something to pull us together again and our President campaigned on the promise to bring our country together. A presidential grant of amnesty to all who resisted the war in Vietnam would be that magnanimous gesture and would help to heal the wounds of war and put us in the direction of using the resources of this country for constructive purposes. I would be very much in favor of such an act of Christian charity.

LETTER FROM REV. FRANK BUISMATO, OFM, SAN FRANCISCO, CALIF.

CENTER FOR PEACE & SOCIAL JUSTICE,
San Francisco, Calif., March 1, 1974.

Hon. ROBERT W. KASTENMEIER,
Chairman, House Judiciary Subcommittee No. 3,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: Peace at home is as important as peace abroad. An act of faith and reconciliation is needed to stop further punishment of young men who resisted the war in Indo-China.

Justice requires an unconditional amnesty, pardon or fair restitution for all men convicted or facing conviction arising out of their refusal to participate in the military action in South-East Asia.

A general land unconditional amnesty would be a sign that we want to live at peace with each other, that we want to end within ourselves the anguish of divisions caused by the war.

We should welcome the return as free members of a freer society these young men who can give much to the future—theirs and ours.

A forthright leadership by your Committee on behalf of Amnesty would find a positive response from the people.

Sincerely yours,

Rev. Frank Buismato, OFM, *Director.*

LETTER FROM LORAN T. LENTZ

Rice Lake, Wis., *March 16, 1974.*

Hon. Robert Kastenmeier,
Representative, Second District of Wisconsin,
House Office Building, Washington, D.C.

Dear Congressman Kastenmeier: Due to the distance involved, I was not able to attend the hearings on amnesty held by your sub-committee in Washington this week. I am writing this letter in the hope that you and your sub-committee will give the arguments I set forth here consideration when you write your recommendation to the full committee.

In December of 1969 I was convicted of refusing induction into the United States Army and sentenced to three years in federal prison. I served over a year and a half of that sentence in prison, nearly all of that time being spent in Springfield, Mo. I completed the remainder of the sentence on parole status.

It was and is my view that when the Armed Forces of the United States are engaged in the kind of immoral and illegal activities in which they have been and still are engaged in Southeast Asia (and other parts of the globe), it is immoral and unconscionable for an individual to permit his body and/or mind to be used by the military or to cooperate with the military in any way. To surrender responsibility for one's own actions is to deny one's integrity and identity, and I would like to think that our society places more emphasis on those values than on blind obedience to conscienceless statism. Furthermore, I think it is apparent that the Selective Service System (SSS) had safety valves designed into it in the form of deferments so that those who might have proved most disruptive to the system were tempted with an easier way out than confrontation and the army was therefore able to continue to get bodies in order to wage illegal and immoral war.

Those of us who said "No", whether through draft resistance or desertion, to the lunacy and immorality which have marked this country's military ventures were merely the vanguard of the public as a whole, although I do not feel that the legitimacy of our position lies solely in its acceptability by the public. For example, if the majority of Germans in the 1940's had supported the extermination of Jews, would that have detracted from the validity of the objections of the opposition? In our own country, was the popular support of (or at best, lack of outrage at) the lynching of blacks a moral proof that the minority who actively opposed such treatment of their brothers were the ones who were wrong? That public opinion now in regard to Vietnam has changed so radically from public opinion in the early Johnson years is largely a tribute to those who did resist the government's coercion and worked diligently and at great risk to expose the government's lies.

We have heard a great deal lately about various proposals for conditional amnesty tied to some form of alternate service. I have objections to alternate service on several different grounds.

One is that if the Congress were really concerned with "testing" the patriotism of young Americans (which presumes, I suppose, that all older Americans have already had their patriotism "tested" in some way) in terms of some visible measuring stick such as participating in certain government programs, they would enact legislation requiring that every American, regardless of economic status or sex, would perform service of some kind and there would be no policy of deferments. I am aware that such a policy has undoubtedly been discussed and I am aware that most citizens and, I believe, legislators probably feel that having a universal draft of that sort is not necessary to "test" the patriotism of young

Americans and that legislators are well aware that people can serve the best interests of their country and their brothers and sisters in ways other than compulsory government service.

Given this prevailing attitude, requiring alternate service as a test of the loyalty of those who oppose whatever the current military policy happens to be smacks of gross discrimination. Shall patriotism for one's country be defined solely by compliance with the current party line being handed down from Washington? Such an opinion must surely suffer since the revelation of the campaigns of deceit on the part of both the Nixon and Johnson administrations. Millions of Americans were exempted from the "loyalty test" of compulsory military service by virtue of the fact that they were born female. Hundreds of thousands of others were able to avoid a confrontation with the SSS by utilizing the deferments that the SSS had provided for that very purpose. They passed their "loyalty test" by going along with the rules of the game and not challenging the authority of the SSS to snatch up young men and use them for immoral purposes. I say that it is merely one more example of the government's arrogance and vindictiveness to require those few thousand young men who either could not or would not escape service through the safety valve deferments of the SSS to "prove" their patriotism now by taking the "loyalty test" of alternate service.

Another objection I have to alternate service is that it implies that those of us who opposed the Vietnam war and the draft, which ultimately led to our going to prison or into exile, or deserting, committed a crime to society and must therefore pay some sort of debt to society before we can be cleared of guilt and accepted again. The debt we are to pay is alternate service.

We have no debt to pay—on the contrary, society is in our debt for our refusal to participate in one of the most shameful episodes in American history.

Perhaps the strongest objection I have to the concept of alternate service is that if one participates in such a program, he is submitting to the government's claim that it has a right to compel him to kill whomever the government tells him to kill or, failing that, to perform some necessary service that will free someone else to satisfy the government's desires. In this manner, alternate service compels one to be a participant, albeit indirectly, in those very activities to which he objects.

Again, if one allows the government the authority to impose alternate service, he surrenders his right and responsibility to make major decisions regarding the way he lives his life in relation to his fellow man. It has always seemed contradictory to me that so many of those people who claim that the federal government has a limited role in providing for the social and economic needs of the people of this country on the grounds of rugged individualism and free enterprise and who shudder at the prospect of such concepts as socialized medicine and nationalization of primary industries that exploit our natural resources, should at the same time be willing to delegate to the government the power to compel an individual to kill or to enable someone else to kill his fellow man.

I regard the issue of amnesty vis-a-vis Congressional legislation to be one not of society's "forgiving" or "forgetting" the "crimes" committee by those of us who would not be coerced into supporting the Southeast Asian war, but of removing those penalties which society had no right to place on us in the first place. It is little enough to demand as restitution for the way we have been treated when our only crimes were trying to keep from adding to the shame of our country's immoral actions in Indochina and seeing through the government's policy of lying before the rest of the country was willing to admit that the policies of the government and the military were and are based on secrecy and lying to the American people.

As a draft resistor who will certainly be affected by whatever Congress decides on the issue of amnesty, I wish to go on record that I will not condone nor participate in any program of amnesty other than complete, unconditional amnesty. I did not compromise my conscience in 1969 and I cerntainly am not going to do so now so that Congressmen who lack the courage to do justice by those men who served their country by trying to awaken her conscience can continue the reprehensible policy practices by the Nixon administration of using war resistors as scapegoats for the problems with which they themselves have burdened our society.

We fought for our country's honor and our personal honor in military and civilian courtrooms, in prison cells and stockades, in foreign lands—far from our loved ones and our homes. Congress should vote for unconditional amnesty in the realization that it is they, not we, who are in need of forgiveness for their complicity with the Executive branch of government in the waging of war in Indochina.

It is true that we resisters do not need amnesty nearly so much as the nation as a whole needs it. If this country is ever to replace the deep sense of degradation brought about by years of government slaughter in and lying over Vietnam (and now Watergate) with a sense of social purpose, it is necessary to make a clean break with these bankrupt policies of deceit and dehumanization and to stop oppressing those who oppose such policies. Unconditional amnesty is the only way that the Congress and the people can avow their disapproval of past mistakes and their determination to make a new beginning.

It is America's good fortune that there are men to whom she can make such a statement of a new direction to herself and to the world. It is one more way in which the war resisters will have served their country.

LORAN T. LENTZ.

A STATEMENT FOR AMNESTY FROM KENNETH BURROWS, BELLENDORF, IOWA

I am not a student of politics, and I make no pretense to offer a sharp political analysis of the issue of amnesty. I am a conscientious objector, presently performing alternative service, and my arguments in favor of amnesty are based largely on the moral question involved as well as what appears to be a Constitutional dilemma. In other words, is it right for the U.S. to refuse to offer amnesty to those who, in various ways, opposed the war in Vietnam? And, would not a refusal to offer amnesty now be symptomatic of a long-standing American malady which violates the Constitutional guarantee of religious freedom?

At the outset it is important to clear the argument of the obvious, lest it consume too much time. There are war resisters (by name) currently in exile, in prison or in the underground purely as a result of their refusal to live up to a responsibility. Unmoved by questions of the morality of violence, their goal was, and is, solely to avoid contributing themselves. In a way, amnesty does not touch them. Their crime is a lack of ambition, not opposition to war; a refusal to offer themselves to any worthwhile cause. While we can rightly find their stand devoid of merit, we should bear in mind that thousands of others who live the same escapist philosophy will never be singled out because they will never be called up. Under these circumstances, it hardly seems democratic to single out even this batch of the listless for punishment and let the rest go free. However fairly the wheels of a draft lottery turn, that kind of system does not require all men to account for themselves. (If we are going to begin to discuss each citizen's obligation to render service to the country—and I believe that obligation exists, provided it is not confined to just military service—then let's find a system that asks service of everyone and quit linking it only to the draft eligible.)

The argument for amnesty necessarily looks to those who are in exile, in prison or in the underground because they were moved by sincere good conscience to reject the violence in Vietnam. The argument for amnesty recognizes that in seeking reconciliation for these men, others not as highly motivated may be reconciled in the process. But the argument for amnesty pleads that the good to be accomplished in the former far outweighs the harm to be chanced in the latter.

Why should the sincerely motivated be reconciled since they refused to do what others did not refuse? Why should we reconcile the living dissidents after filling graves with the patriotic? We must remember that America's history is replete with proud tales of people who fled countries because of persecutions and injustices, hoping to find a better way. We hail today the works of Soviet dissident writers, citing them for their singular courage and their individual stands against the injustices the perceive. Yet we are inconsistent. When such would-be heroes surface at home, we strive to condemn them.

The writers of the U.S. Constitution took pains to guarantee that this would never happen—that Americans would not suffer the same persecutions they fled in Europe. In reaching for that end, the writers installed freedom of religion into the Constitution. It meant no one would ever be forced to serve a national purpose in opposition to religious convictions. How well has that guarantee worn?

Next to an inflated love and respect for our military, not well. Each draft eligible man is theoretically given the option in this country to serve in the armed forces or to not serve. But it is a narrow path cut for those who choose not to serve. The burdens of proof of conscience are on them. The genuineness of their conscientious objection is judged by their draft boards. Their conscientious objection to a particular war is called impossible—it's either pacifism across the board or it is nothing. Their conscientious objection to war without formal religious convictions is a weak argument to offer. And even those who seek status as conscientious objectors and are granted it are required to cooperate with and submit

to a system they view as immoral by purpose. In summary, for those opposed to war, the options are few. There may be some kind of religious freedom, but there is little of freedom of conscience, and the two are vitally, inherently linked.

If we still maintain that ours is the best way—if we say freedom of conscience should be subordinated to needs of war and nationalism—then let us admit ours is not the free country we once dreamed about. If we insist on punishing those whole moral convictions have caused them exile or imprisonment, let us admit that freedom of religious belief is not for everyone, all the time. If we refuse to offer amnesty now, let us admit that our military needs command more respect than one of our most cherished freedoms.

In the wider analysis, amnesty is already a late step. The nation has walked on the freedoms of those now needing amnesty by not remaining true to its Constitutional pledge. Amnesty could function as an apology for that offense. By announced American ideals, it is a moral imperative.

From the president on down, rhetoric about amnesty condoning criminal acts has muddied the water. Criminality is not at stake as much as freedom. Indeed, if the asserting and pursuing of a free conscience is to be held as criminal, there is no point in talking of freedom anymore, except in past tense. The amnesty issue has challenged government to define the limits of religious freedom. That freedom, along with the lives of thousands who exercised it, is what now hangs in the balance.

American Exiles in Canada: A Social and Psychological Follow-up[1]

(By Saul V. Levine,[2] M.D., Associate Professor, Department of Psychiatry, University of Toronto)

ABSTRACT

The end of the Vietnam War and some forms of amnesty as a possibility have both had an unsettling effect on American draft dodgers and deserters in Canada. While many had established successful lives in Canada, they were often still plagued by self doubt and ambivalence. The most common negative emotions exacerbated recently have been guilt, depression, anger, anxiety, dehumanization, alienation, and shame. Until the final chapter on the war is written, until the level of ambiguity diminishes, there will still be an emotional toll taken from these young men.

For young American men who find themselves in Canada for reasons having to do with the Vietnam War and U.S. military, 1973 has been an unsettling year. Many of these exiles (draft dodgers and deserters) had finally, after much effort, reached a psychological stage wherein they could look to the future, settle down, and build rewarding lives for themselves and their families outside the United States. But with the end of the Vietnam War and *some* form of Amnesty at least a possibility, they have once again found themselves torn and confused. If they are not questioning themselves about their reasons for being in Canada, for having left the military, their parents, the States—then others are. Much had already been written about these men (Christy, 1972; Emerick, 1972; Kilmer, Locky, Wiley, 1971; Kline, 1971; Levine, 1972; Polner, 1972; Williams, 1971) and the furor died down, but they are now the object of public interest once again. In the past few months scores of media men, representing newspapers, radio and TV networks and stations from across the United States and the rest of the world (Japan, France, Germany, England) have been conducting interviews here with any expatriates they can find, and questioning them about their feelings about the War, their families, amnesty, their plans, etc. . . . . This has led to an exacerbation of personal issues long dormant, and a reawakening of strong feelings. This author had studied this group a few years ago (Levine, 1972) and has been interested in following their personal progress and views from the point of view of their adaptation to a situation which was originally extremely trying.

It is (still) very difficult to know or even estimate the total number of these young men in Canada. The most accurate and verifiable information from the Department of Citizenship and Immigration reveals that approximately 27,500 draft-age men applied for Canadian citizenship between January, 1965 and Septem-

---

[1] Manuscript submitted for a forthcoming special issue of the Journal of Social Issues.

[2] Saul Levine is Associate Professor of Psychiatry at the University of Toronto where he is also Director of the Mental Health Clinic at the Hospital for Sick Children. His interests and professional experiences are diverse, but currently he is most involved in the social effects of different life styles. He has published studies and papers on urban communes, speed users, poverty and psychiatry, brief psychotherapy with children, and Indian mental health, among others.

ber, 1972. One must assume that at least some of these men emigrated for reasons totally independent of the War or the military. In addition, there is a presumably large, but undefined number of American exiles in Canada who have not been able to attain landed immigrant status because of insufficient "points" (money, job, education, skills, etc.). On the basis of information from a variety of sources (antidraft programs, National Council of Churches, Amex etc.) it is estimated that approximately 15–20,000 men are in this situation, probably fewer than in 1970. Many of these men planned to come into Canada first, and apply for immigrants' visas while here, but a recent (November, 1972) change in the Immigration Act no longer makes this a possibility. There are thus a large number of men "trapped" in Canada—they can't return to the States for fear of prosecution, and they can't make themselves known to Canadian authorities for fear of deportation. The relatively free interchange across the border is down to a trickle, whereas in past days there was tremendous traffic in both directions. To these figures one could also add a large number of dependents now living with these men (wives, children). Given these less-than-satisfactory estimates, we are probably dealing with a population of between 40,000 and 50,000 Americans in Canada for reasons directly related to the military (Dee Knight, 1973).

This is far more than the number allowed by the U.S. government (4,000) (Buchanan, 1973), and far less than estimated by the various Anti-Draft Programs (75,000–100,000). These figures do not include the many thousands of young men who have come up here for a few months over the past few years and then returned, nor do they encompass those up here for ideological reasons but not under any personal threat of being drafted. They also do not include the exiles living in other countries (e.g. Sweden, Great Britain), or those living Underground in the United States, but some of our findings are obviously relevant to all of these groups.

In an earlier study (Levine, 1972), the author studied the process of adaptation of American draft dodgers and deserters arriving and living in Canada. These young men experienced many of the problems faced by other immigrant groups (Bar-Yosef, 1968; Brody, 1970; David, 1970), but there were significant differences. It was apparent that these expatriates tended to go through four fairly predictable stages in their first year in this country. The first was called disorganization, and referred to a state of pain, bewilderment, ambivalence, and intense loneliness. This was followed by the stage of Acting Out, characterized by impulsivity, dropping out, occasional anti-social behavior, sudden departures and destructive relationships. The next stage was labelled Searching, wherein the individual began to explore himself and his interpersonal relationships, look for meaning in life, pursue academic and vocational interests, and develop some stable ties in Canada. The stage least commonly reached at the time was the final one, called Adaptation and Integration, during which time expatriates became totally integrated into the Canadian scene—socially, economically, politically, even emotionally at times.

Reasons for the relative rarity of this last stage were: the "forced" nature of their entry into Canada; the comparatively short time here; the patriotism engendered in American youth (present in estranged exiles); the ambivalence of these young Americans; beckoning messages (family, friends) to come home; resentment by Canadians; a strong support network and social system made up of many men in the same situation, and often supported by Americans (e.g. National Council of Churches). They thus tended to remain Americans-in-Exile rather than become New Canadians.

There were other factors, however, that predisposed to effective coping with the stress of this major move and successful adaptation to Canada. It was found that those expatrirates who did better in Canada tended to be older, and had parental support (not necessarily agreement), some college education, planned and prepared for the move in advance, contacts in Canada, an ideology or philosophic rationale for their actions, money or marketable skills, and considerable luck. It became apparent that these middle class individuals were of the draft dodger group, while the deserters tended to be characterized by factors mitigating against easy integration into the social fabric of life here: relatively young, lack of support or preparation, unemployment and poor academic record, often prior emotional difficulties, and others.

What has happened to these men over the succeeding years and what is their situation at present? Over the past few months the author has had extensive interviews, both formal and informal, with many expatriate Americans and those providing services to these men. Twenty-two exiles were formally interviewed (twelve draft dodgers, ten deserters), but many more expressed their feelings freely and informally during discussions. On the basis of these interviews and

other information we can see that a number of interesting developments have taken place and we can divide them into, (a) during the war, and (b) after the war's end, repatriation of prisoners and much talk of amnesty.

(*a*) As time went on and the Vietnam conflict began to appear interminable, more of these men achieved the level of stage four. The majority of draft dodgers took out citizenship papers and settled into a new life here, convinced that returning to the United States was an impossibility, nor was it something necessarily desirable to them. The men were now more dispersed, into their own very personal thing, integrated into the Canadian community. Amnesty, just a few months ago was not even to be considered by either side, and in any case, preoccupation with the concept served to prevent effective assimilation. As mentioned above, deserters had a rougher time coping, and many returned to the States to face punishment or went Underground there. Yet, thousands of even this group began trying to make a good life in Canada. The expatriates began to "live" again—relationships deepened, roots were established, and a stable pattern of living devolved. Wives and lovers, children, jobs, schooling, responsibilities—all these factors served to get these men thinking more in terms of their present and future, instead of just the past. By all our means of estimation (admittedly crude), the large number of young men were in a relatively emotionally healthy state. This may have been due to the process of attrition and selection (the weakest went back, for example, or never came originally), or to the relatively strong support network.

On the basis of my contacts with those Canadians and Americans here known to the exiles as sources of help (Council of Churches; Amex; Toronto Anti-Draft Program; American Deserters Committee; Red, White and Black; Union of American Exiles; Committee to Aid Refugees from Militarism etc.), and with the men themselves, it was obvious that there was a marked decrease in the number of "cries for help" by expatriates in emotional distress over the past couple of years. In other words, by far the majority of exiles were "making it".

(*b*) It is necessary to reiterate that the end of the Vietnam war and the considerable public concern about amnesty have had an unsettling effect on the exiles in Canada (and elsewhere). Consequently, there has been an aggravation of painful feelings and thoughts among the men and their families. Many had convinced themselves that they were staying in Canada, that this was "better" country, that return to the States was morally wrong, and certainly that their original actions were justified. Not only was this valid for many of them, but it was important psychological work for them to accomplish if they were to make any kind of reasonable life in Canada. Staying here would have been untenable if there had been a discrepancy between their feelings and their cognitive set—they *had* to convince themselves, to maintain their emotional equilibrium, that they had pursued the "right" course of action. An ideology, a philosophical justification of their actions was necessary to prevent severe cognitive dissonance (Festinger, 1957), and a severe blow to their self-esteem. Since the war's end many have been urged to return home by family and friends, and with the departure of each individual (there have been a few), self-questioning becomes intense.

The possibility of return with minimal punishment, and difficulties here in Canada (not the least of which is growing anti-Americanism) have suddenly served to upset and confuse many of the expatriates. There has not been a regression back through the four adaptive stages, but the kinds of thoughts and feelings present during the war have not become much more intense and painful. After a period of relative quiescence, more of the exiles have been coming recently to counseling centers for advice, to review their draft status and to receive emotional support.

Emotions

The degree and form of certain emotional states were particularly unique in this group as a whole. The emotions were based on pre-existing personality and social circumstances, obviously, but were remarkably coloured by the recent common experiences of the expatriates. While many had established successful lives in Canada, they were still often plagued by negative feelings originating in their own decisive actions in response to the war (even if the consequences of these actions were known to them beforehand). Self doubts and ambivalence lead to heightened levels of painful emotions; the ones most often seen in these men are guilt, depression, anger, anxiety, dehumanization, alienation, and shame.

Guilt

One of the most pervasive of the emotions felt by the exiles is one of guilt. This is not as simple as their detractors might lead the public to believe, however; it is not simply a matter of having done wrong, feeling remorseful about their actions,

and wishing to atone for their sins. The paradoxical nature of this guilt lies in the fact that they still feel a moral justification for their original actions (draft evasion or desertion), that these actions were in fact courageous and honourable. Why then feelings of guilt? This is a multifaceted emotion based on a number of factors: (1) the guilt over having left home, often against their parents' and friends' advice; not being able to return (legally); often rejected, ostracized, criticized; (2) the guilt over having left their country; even in strong disagreement with its policies, leaving the country to which one has been brought up to love is an extremely threatening act to carry out; (3) the guilt over not having taken their punishment—in jail, for example—as many others did; (4) the guilt over not having gone underground and fought the system, as still others did; (5) the guilt over the fact that 55,000 other men, many like them, were killed in the Vietnam war, and hundreds of thousands injured, when they too could have come to Canada (many were tempted); did their being in exile cause the unnecessary death of young men elsewhere? (6) the guilt over not having served in the military—"doing one's duty" was hammered in for years prior to their departure, and was thus difficult to deny; (7) the feelings of guilt engendered by not seeing a loved one again, especially if he or she dies (parent, siblings, friend etc.) while the exile is in Canada, is especially poignant and intense; (8) the guilt over having killed—some deserters had done so while on active duty in Vietnam; (9) the pathological (neurotic) guilt brought with some of them from earlier days, either making itself manifest now or continuing to plague the individual. Guilt is the single most common affective state felt by these men, but it is closely related (casually in many instances) to depressive feelings.

Depression

Varying degrees of depressive symptomatology were seen. However, depression as a strict diagnosable clinical entity was probably no more common than in the comparable population of Canadian or American young men at home. What was seen was a depressive mood, a common sadness that predominated over lengthy periods of time and in a variety of situations. If loss of an important individual (object) is a necessary and sufficient prerequisite for the development of depressive symptoms, then many of the expatriates had every reason to manifest these kind of feelings and behavior. One of the important differences between these and Canadian young men is that the latter could always go down to the States to visit or even live; the exiles could not do so except under an assumed name and taking serious chances. The draft dodgers and deserters are in the unenviable position of possibly never seeing their neighborhoods, towns, old friends, and many significant family members—this is a real loss. In addition, many faced total rejection or lack of support, and were left feeling estranged and alienated (see below). Furthermore, in a significant number of cases over the years, there had been actual deaths of parents or siblings back home, without a reunification or reconciliation of some kind. Feelings of guilt followed by depression were quite common in these individuals. When someone's self-image is so intrinsically enmeshed in a specific but controversial and serious course of action, and that action itself comes into question, as has been happening since the war's end, that individual's self-esteem plummets, and depression often ensues. For some there is a feeling of having made an irrevocable decision that henceforth stifles any possibility of having options; that is, the idea that a door is barred to one, even if he has no intention of going through it, is, for some, particularly stressful. This is especially so for those who have been brought up to believe in unlimited options, and for those who have something warm and secure (even memories) on the other side of that door.

Anger

All these emotions are not mutually exclusive, nor are they necessarily engendered by different situations. Thus we can find an exile who harbors feelings of guilt and sadness, yet is angry at the same time. Like the other emotions there are multiple (conscious) rationales for the anger. The exile can be angry at the American government for conducting a brutal or dishonourable war, for "forcing" a moral dilemma and a painful decision on him, for refusing to grant amnesty, or for demanding retribution and punishment. He might be angry at Canada for its often indifferent or even hostile reaction to these Americans. He could be angry at himself for having originally deserted or evaded the draft or, conversely, for being weak and repentant at the present time. Some have even shown anger at their fellow exiles for jumping on the amnesty bandwagon and returning to the States as soon as the opportunity presented itself.

With some the anger manifests itself as a temporary resentment, but with others it is an all-pervasive seething and omnipresent hate. It is the author's impression that this latter group was in (or in for) the most personal difficulties. They had not yet come to terms with their original actions, not yet been able to cope with their situation (no longer new), and were not yet having the kinds of experiences necessary for living—mutually nurturant personal relationships, satisfying occupations (job, school, activities), and a sense of positive meaning to their lives. They were often so preoccupied with the hostile forces "out there", that it made personal introspection and self-realization an impossibility. Anger as a predominant affective state appears to be the most self-destructive of emotions in these young men because it seems to prevent any kind of reasoned action, even against the hated object; it is at once stultifying and ultimately self-defeating. It also seemed to be a harbinger of serious psychopathology, especially paranoid state, when seen to this severe extent.

Anxiety

For some of the exiles, a state of free-floating anxiety seems to be prominent in their psychological experience. Many of these men are fearful, unhappy, confused, ambivalent, and indecisive. Those predisposed to this type of affect seemed either to be chronically psychoneurotic, or those with the least support resources (job, money, relationships, etc.). The latter also tended to be the youngest and least mature, and there was considerable evidence of difficulties in the past, especially in coping with major transitions.

Ambiguity, unfamiliarity, and lack of support are difficult stresses for any individual to cope with, and these accurately describe the situation for some men. The whole issue of amnesty has lent an air of ambiguity to almost all the men seen during this study, and has meant a great deal more personal upheaval. This type of stress is much more ominous in someone who has strong dependency needs, or where need for structure and routine is inordinate. When the anxiety became uncontrollable or unbearable in the few cases with which I am familiar, it extended into intense fears and phobias, confusion and emotional paralysis, and even psychotic decompensation on occasion. In general, it was not so destructive, but certainly was present in the majority of men I interviewed. It often took the form of "existential angst" and served a useful purpose in the younger men as an aid to identity resolution. The problem, of course, is that many of the issues or tasks of adolescence had been to some extent resolved (or at least buried), but the possibility of amnesty changes the rules of the game.

Dehumanization

One must be careful before invoking a perjorative term such as dehumanization to describe the attitudes and behavior of a large group of individuals. But to the extent that the severe stress of leaving home under duress has forced many of these men to protect themselves from the onslaughts of painful emotions, dehumanization is an accurate description. That is, these individuals often avoided feeling fear, shame, guilt or other severe discomfort by compartmentalizing their emotions and reducing their capacity to feel affect intensely. The dehumanization was usually both object-directed and self-directed, and the results have been seen and cited elsewhere (Group for the Advancement of Psychiatry, 1964). Increased emotional distance from other human beings, diminished sense of personal responsibility for the consequences of one's actions, increasing involvement with procedural problems to the detriment of human needs, inability to oppose dominant group attitudes and pressures, and feelings of personal helplessness. In most instances, the dehumanization was and is adaptive for the particular individual, and served to stave off intense psychic pain and disorganization. In these circumstances, impulsive or irrational behavior was actually prevented by utilizing defense mechanisms of denial and isolation, keeping people and problems at a distance. There is a price, however, and in other situations this mode of behavior becomes maladaptive, resulting in destructive interpersonal relationships and ultimately, personal misery.

Alienation

Feelings of alienation are said to be common in contemporary society (Lystad, 1969; Sykes, 1964), but my findings was that this was particularly prevalent and gnawing among the expatriates. If alienation can be defined (Seeman, 1959) as feelings of normlessness, meaninglessness, powerlessness, isolation and self-estrangement, then it is a state very commonly seen in this context. These young men have a great deal of difficulty feeling "at home" in Canada, in spite of the cultures having such strong similarities. Those who felt most alienated, however, seemed to be those for whom the Canadian way of life was most different

from their own—for example, exiles from the Deep South of the United States. In addition, growing and vocal anti-Americanism even among the New Left in Canada, has made many of the men feel unwelcome and uncomfortable here. Further, there are still many Canadians who resent the intrusion of men whom they see in simplistic reactionary terms (cowards, spongers, dishonest, etc.). The men find themselves in particular difficulty if they view themselves as exiled Americans instead of New Canadians. But in either case, it is a difficult time for an American of any persuasion to be in Canada—this country has become preoccupied with defining a national identity that seems to incorporate enmity towards the States as part of the definition. Even sympathetic Canadians have little sympathy for those here without landed immigrant status, and seem to resent any suggestions that any men would return if amnesty were offered.

Related to the experience of alienation are feelings of loneliness, lonesomeness, and homesickness. It has not been an easy task for some of the expatriates to readily make warm friends in their adopted country. These feelings have become much more manifest since the end of the war and at least the potential granting of amnesty. Most of them know of open arms longing and waiting for them back home, and this merely adds to the dilemmas that they face in Canada. It used to be that many of the exiles could rely on each other for support and nurturance; they often lived close to each other in specific communes or neighborhoods. With the dispersal of the men throughout the country and multiple moves (most moved three times in their first year here), they can't even rely on each other to the same extent. Furthermore, pockets of Americans living to some extent isolated from the surrounding community actually aggravate the feelings of alienation.

Shame

A small proportion of the men feel shame over what they have done (deserted, evaded the draft, left their country, estranged their parents). Related to this intense emotion are feelings of regret, embarrassment, and humiliation. Some of them feel strongly that they made a serious mistake and have in fact behaved wrongly, even immorally. These men are tending to want to go back and face their punishment, even insisting on it to "clear their conscience". It is difficult for these men to reveal their feelings to their compatriots.

I have been impressed by the Draft Counsellors' attitudes in these cases like these that I have seen—the guilt-ridden, ashamed individual is not subject to group harassment or antipathy, but rather is encouraged to pursue that course of action which makes sense for him. He is actively helped to return to the States if that is what he wants. While the extreme cases of this nature are uncommon, milder degrees of these feelings are present in a large majority of the men, and this makes for a great deal of intrapsychic ambivalence and conflict. Certainly regret that they didn't handle it differently is a very common feeling—this is especially so when they have seen repetitively their friends avoid serving by "legal" means.

Discussion

I have concentrated on these emotional states which are in essence negative ("downers"), from the point of view of the individual's personal happiness. I am convinced that the Vietnam war and their handling of it have taken a considerable personal toll from these young men, even though they weren't in combat themselves. What they did took courage, in fact, and they paid for their own sacrifice in personal hardship and loss. While many of the men matured and are leading relatively satisfying lives, many of the above feelings will continue to haunt them for years to come. I would not call their experiences particularly growth-enhancing; if anything, there has been a slowdown in their outward thrust (intellectual, social, occupational) for most of them since leaving the United States.

Notwithstanding the intense and poignant emotions felt by these men, it is my impression (and it is only that) that there is no greater prevalence of serious psychopathology in this group than in any other comparable group. In spite of considerable and unusual stress experienced by all of them they are in general a resourceful and adaptive group. There are exceptions, of course, but any young adult group has a significant incidence of mental illness, emotional incapacitation, antisocial behavior etc. (Pasamanick, Roberts, Lemkau, Kreuger, 1959, Srole, Langer, Michael Opler, Rennie, 1962). The fact that these men are new immigrants is not sufficient data to lead to the conclusion that they must have serious emotional problems; there is in fact evidence to the contrary (Sauna, 1970). These exiles are obviously not a psychiatric patient population. I made a distinction, then, between the classical clinical syndromes and the kind of emotions discussed above. The toll the war has taken is not manifested in mental illness statistics; it is seen, rather, in the day-to-day lives and preoccupations of these men; it has been considerable.

Canada prides itself on abhorring the "melting pot" ideal of American assimilation of immigrant cultures and does much to see to it that ethnic minorities maintain their uniqueness and flourish here. It is now enunciated Federal government policy that cultural diversity and the considerable richness it affords is a desirable goal. It is known that adaptation and assimilation for all new immigrants is a challenging task (Bar-Yosef, 1968; Brody, 1970); it is especially so when the migration is to a large extent involuntary (David, 1970).

The American exiles are not typical New Canadians; because of the nature of their relationship to their native country, they retain a unique ethnocentrism (Klineberg, 1940) even while attempting to become part of Canada. This is the most primitive of the stages of social perception, and it effectually limits the ways that new information can be processed to a narrow and personal frame of reference (Group for the Advancement of Psychiatry, 1964). With this cognitive set, it is difficult for a refugee from the American military or political system to even attempt to give up his heritage and adopt a new country. In a sense, the subtle differences between the two countries makes it even harder to discriminate between them; the cultures and life styles are so similar, and the American influence so pervasive in Canada, that the level of ambiguity rises tremendously. Intolerance for ambiguity is inversely related to the degree of personal comfort and security (Frankel-Brunnwick, 1950); in a state of personal strain then, many of the men had difficulty tolerating this ambiguity. (It might, in effect, be easier to adapt to a completely foreign country in these circumstances rather than one seen as almost a replica of their own.) Some manage better than others; these American arrivals have recently been classified into two groups—the expatriates, for whom Canadian citizenship is a goal, and the exiles, for whom return to the States either to resume living or "the cause" is their goal (Colhoun, 1973).

Amnesty

The end of the war and the media coverage of the whole issue of amnesty have forced the exiles back onto "Page One", and confronted them with their own conflicts (see above). In addition to the personal dilemmas facing the men, what seems to interest all the reporters descending on Canada is "What if?" (amnesty is declared). There is as much controversy raging in Canada about amnesty as there is in the States, but for different reasons. In this country citizens seem resentful of those exiles who wish to return, considering them exploiters and ingrates. The exile movement itself is split along similar lines: those with their Canadian citizenship (and by necessity the revocation of their American citizenship) have been critical of the draft evaders and deserters who wish to return home. This debate has been seen both in the popular press and certainly rages in the current expatriate press. Those who wish to leave point out that they are not the only newcomers who have left (15% of Italian immigrants to Canada since World War II have returned to Italy). Further, many claim that they never claimed to want to stay in this country—it was a matter of necessity at the particular time. Many are in the process of "changing their minds", or wrestling with mixed feelings. In part it depends on the nature of the amnesty offered, and the particular individual in question. There is precedence for various forms and degrees of amnesty (Presidential or Congressional) being declared in the United States after most of its wars (Civil War, World Wars I and II). It is important to bear in mind that at the present time there is a de facto amnesty in effect; that is, most exiles (draft evaders) who have returned recently have been given a minimal sentence of mild alternate service plus a probationary period (Percy, 1973). President Nixon has categorically refused to grant any form of amnesty, while some influential Congressmen and Senators have come out in favor of varying kinds of amnesties.

The most likely concepts seem to involve unconditional amnesty for draft evaders and conditional amnesty (after imprisonment or alternative service) for deserters, or conditional amnesty for draft evaders and no amnesty at all for deserters. This possible dichotomy has met with a great deal of opposition, for it seems to base an entire judicial approach on "when someone saw the light". It has also been criticized as favoring the middle class young man with resources (the draft dodger) while being unduly punitive to the lower class individual (the deserter). In the meantime many organizations have aligned themselves on both sides of the amnesty question.[3]

[3] Pro-Amnesty Groups: AMEX, ACLU, Canadian Anti Draft Program, FORA (Families of Resisters for Amnesty), Safe Return Committee, Union of American Exiles, National Council of Churches, Amnesty International. Anti-Amnesty Groups: NAD (No Amnesty for Deserters), POW-MIA, President Nixon's Administration.

Who would return to the United States from Canada if an amnesty was offered, and who would not? Let us assume for the purpose of this discussion that the amnesty offered was unconditional to both draft dodgers and deserters, with no form of punishment or alternative service demanded (there is no possibility, in my opinion, for this type of amnesty to be declared). With this kind of fantasy material, after months of speaking with exiles and those who work closely with them, I draw the following conclusions:

(1) virtually all exiles want an unconditional amnesty; they want what all Canadians have, the option of going to the States, even if just for a visit.

(2) most would be sorely tempted to return to their homeland.

(3) all exiles without landed immigrant status in Canada, for whatever reason, would return to the United States.

(4) at least three quarters of the deserters would return.

(5) at least half the draft evaders would remain in Canada.

In other words the majority would go home again under circumstances which do not appear to be a likely eventuality. With modified amnesty plans, the numbers leaving Canada would be substantially reduced; obviously a young man with a family must weigh very seriously the time he must spend in prison.

The last ten years have been an unhappy period for thousands of young men who left the United States under duress to avoid service in the military in a war which even the most conservative of politicians would consider a mistake, and the most liberal would label as a moral disaster. These exiles have suffered considerably. They are not held in high esteem by the majority of either Canadians or Americans. Many of them have renounced their American citizenship and have become Canadians, but thousands of them consider themselves to be patriotic Americans. Canadians have a right to expect the exiles to become citizens of their country, but the U.S. must first clarify its own plans. It is the author's opinion that the last chapter of the book of this ugly war cannot be completed until these boys are given the option of staying abroad or returning to their homes and families; America has much to gain by such a move.

BIBLIOGRAPHY

1. Bar-Yosef, R. W. Resocialization and Re-Socialization: The Adjustment Process of Immigrants. International Migration Review, 1968, 2:27.

2. Brody, Eugene. Behavior in New Environments-Adaptation of Migrant Populations Sage Publications: Beverley Hills, 1970.

3. Buchanan, Patrick, J. New York Times, February 20, 1973.

4. Christy, Jim. The New Refugees. Peter Martin Associates: Toronto, 1972.

5. Colhoun, Jack. Amex-Canada, Toronto, 1973, 3:7.

6. Emerick, Kenneth. War Resisters Canada. Knox, Pennsylvania Free Press: Philadelphia, 1972.

7. David, Henry P. Involuntary International Migration: Adaptation of Refugees in Behavior in New Environments. E. Brody, Ed., Sage Publications: Beverley Hills, 1970.

8. Festinger, L. A Theory of Cognitive Dissonance. *Row, Peterson*: New York, 1957.

9. Frankel-Brunnwick, E. In The Authoritarian Personality T. W. Adorno, Ed., *Harper and Brothers*: New York, 1950.

10. Group for the Advancement of Psychiatry. Psychiatric Aspects of the Prevention of Nuclear War Report No. 57, New York, 1964.

11. Kilmer, R. L., Locky, R. S. Wiley, D. S. They Can't Go Home Again. Pilgrim Press, Philadelphia, 1971.

12. Kline, C. et al. The Young American Expatriate in Canada: Alienated or Self-Defined? Amer. J. Orthopsychiat., 1971, 41(1):74.

13. Klineberg, O. Social Psychology, Henry Holt & Co., New York, 1940.

14. Dee Knight, Amex-Canada, Toronto. Personal Communication, 1973.

15. Levine, Saul V. Draft Dodgers: Coping with Stress Adapting to Exile. Amer. J. Orthopsychiat., 1972, 42(3), April.

16. Lystad, Mary, Ed., Social Aspects of Alienation. National Clearing House for Mental Health Information, Washington, D.C., 1969.

17. Pasamanick, B., Roberts D., Lemkau, P. Kreuger, D. A Survey of Mental Disease in an Urban Population in Epidemiology of Mental Disorder, A.A.A.S. 1959.

18. Percy, Sen. Charles. AP—Toronto Star, March 12, 1973, P.81.

19. Polner, Murray. When Can I Come Home? A Debate on Amnesty. Anchor Books, Doubleday: New York, 1972.

20. Sanua, Victor D. Immigration, Migration and Mental Illness in Behavior in New Environments. F. Brody Ed., Sage Publications: Beverley Hills, 1970.

21. Seeman, Melvin. On the Meaning of Alienation. American Sociological Review, 1959, 24(6):783.
22. Srole, L., Langer, T. S., Michael, S. T. ,Opler, M. K. and Rennie, T.A.C. Mental Health in the Metropolis: The Midtown Manhattan Study, McGraw-Hill: New York, 1962.
23. Sykes, Gerald E. Alienation: The Cultural Climate of Modern Man. George Braziller: New York, 1964.
24. Williams, R. The New Exiles: American War Resisters in Canada Liveright: New York, 1971.

STATE OF NEW HAMPSHIRE,
HOUSE OF REPRESENTATIVES,
Concord, March 12, 1974.

Hon. JAMES C. CLEVELAND,
Representative, Second District,
Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE CLEVELAND: I was happy to meet you in Hinsdale last week and enjoyed your visit. I would have liked a much longer period to talk with you but understand your scheduling problems. I also wanted the local people who were there to get a chance to talk to you, rather than me trying to monopolize your time.

My main purpose in imposing another letter on you so soon is that I understand from the news that there are hearings now in the House of Representatives relative to amnesty for Viet Nam War deserters and draft law violators. Last year during the regular session of the N.H. House a House Resolution No. 9 was introduced, (not by me), which memorialized Congress to not grant amnesty to these people.

I am a member of the Military and Veteran's Affairs Committee which held two days of hearings on this resolution. Prior to the hearings we were threatened with every thing from riots to personal attacks. We had Federal Marshalls and State Police as well as the normal security personnel in attendance to maintain order. Fortunately nothing happened other than some pretty violent attacks on the Committee Members verbally during the hearings. A couple of people were ejected from the hearing room for these tactics and disrupting the hearings.

Since there was so much contradictory information presented I was asked by the Committee Chairman to research the subject and present my findings to the Committee before a vote was taken. The information in the enclosed speech which I made on the floor of the house is a result of this research. The B-52 information was included since many allegations were made in Committee testimony. I feel I am equipped to speak on B-52 operations in the Viet Nam War since I personally spent over one and one half years on Guam and in Thailand with B-52s, and flying over every country in South East Asia. The Committee vote was unanimous to pass.

When the committee report was brought to the floor of the House an attempt was made to over turn it. This of course resulted in many pleas for compassion, forgiveness and love. After making the enclosed speech I accepted all questions for about 45 minutes. These questions (?), covered the whole range and I was called everything from arm chair expert by some who didn't know of my military background, to super-patriot, flag waver, vindictive SOB etc. When the whole floor debate was over and a division vote taken about 30 people were for amnesty and the rest of the House against it. I am sure that some where in the files in Congress right now this resolution rests, and I think it fairly represents the feelings of N.H. residents.

The figures quoted by me in the enclosed speech are no doubt quite different today, smaller numbers of people are still involved, however the basic facts are as valid now as last year.

I think that it is extremely interesting that the people who are crying the loudest for amnesty for Viet Nam War deserters and draft law violators are the same identical people who are crying the loudest that the President is no better than anyone else and must obey the law. It seems that it depends on whose ox is being gored whether or not the law should be obeyed.

Hopefully you will make the effort to try and defeat any move for general amnesty in the House of Representatives. I would like very much also to hear your views on the subject.

Thank you for taking the time to read all this correspondence from one N.H. resident and State Representative.

Sincerely,

GEORGE F. SLICER.

○