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September 14, 1976

The Honorable Charles Goodell  
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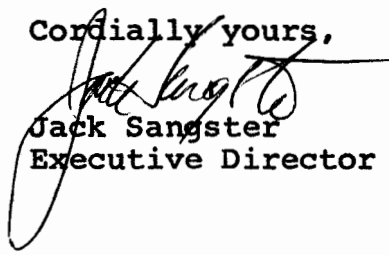
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Dear Senator Goodell:

Please find enclosed an edited transcript of the Congressional Conference on the question of amnesty at which you were a panelist.

Again, thank you for your participation.

Cordially yours,



Jack Sangster  
Executive Director



# AMNESTY

AN UNRESOLVED NATIONAL QUESTION



A Congressional Conference February 26, 1976

(edited transcript)

Published by

**FUND FOR NEW PRIORITIES IN AMERICA**

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A Congressional Conference February 26, 1976

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122 East Forty-Second Street

New York, N.Y., 10017

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INTRODUCTION

This is an edited transcript of a Congressional Conference on Amnesty, which was held on February 26, 1976, in the Dirksen Office Building at the United States Senate, Washington, D.C.

The purpose of the conference was to explore all possible approaches to a major unfinished business of the Vietnam war -- the question of amnesty for those who face punishment or who have been penalized for actions taken in connection with the war. It has been estimated that up to 1,000,000 Americans would be affected by a broad amnesty: those who resisted or evaded the draft, deserters, veterans with less-than-honorable discharges, and civilians who received war-related convictions.

What are the historical precedents for amnesty? The constitutional aspects? Should the President's Clemency Program be extended? Should alternative service be required or should an amnesty be unconditional? These and related questions were examined by a panel representing diverse opinions. As Senator Philip A. Hart expressed it in a letter announcing the conference: "Out of the different views which will be expressed at this Conference may come a better understanding of the issue which will help us move toward solutions the public will come to accept." A unique aspect of the conference was the participation by several veterans as witnesses.

The proceedings have been edited as minimally as possible. They have been supplemented by relevant material in the Appendixes.

The conference would not have been possible without the cooperation of Senator Hart and the unstinting effort of his special assistant, Katharine Schirmer. Senator George S. McGovern presided over the luncheon, arrangements for which were made through the efforts of his foreign policy assistant, Kay Casstevens. Mrs. Irma Zigas and Mrs. Louise Ransom of the National Council for Universal and Unconditional Amnesty were most helpful in recommending participants, pro and con. Jack Sangster of the Fund for New Priorities in America devoted a great deal of time and effort to arranging the conference, aided by several officers and members of the Fund, especially Earle W. Kazis, Maurice Paprin, William Susman, Jack Scherer, Rachel Ginsburg, and David Mandel. The expert copy editing was done by Mary Heathcote.

Ralph E. Shikes  
Editor



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## CONGRESSIONAL AMNESTY CONFERENCE PARTICIPANTS

Moderator

Martin Agronsky

WETA-TV (PBS)

Panelists

Lawrence Baskir

Director, Ford Foundation Project on Amnesty; former General Counsel, Presidential Clemency Board.

Ronald H. Brown

Director, Washington Bureau, National Urban League.

Leslie Dunbar

Executive Director and Secretary, Field Foundation.

Senator Charles Goodell

Former United States Senator from New York; former Chairman, Presidential Clemency Board.

Phelps Jones

U.S. Army, Retired; Director, National Security and Foreign Affairs, Veterans of Foreign Wars.

Senator Edward M. Kennedy

United States Senator from Massachusetts.

Admiral Gene LaRocque

Director, Center for Defense Information.

Reverend Barry Lynn

United Church of Christ Center for Social Action; Director, "To Heal a Nation" program.

Senator George S. McGovern

United States Senator from South Dakota.

Joseph Papp

Producer, Director, New York Shakespeare Festival and Public Theater.

Right Reverend Monsignor  
Charles C. Rice

Holy Rosary Church, Pittsburgh, Pa.



Muriel Rukeyser	Poet; President, P.E.N.
Professor Joseph Sax	University of Michigan Law School.
Henry Schwartzchild	American Civil Liberties Union.
Chesterfield Smith	Attorney; former President, American Bar Association.
I.F. Stone	Writer.
Robert Vayda	Department of Justice; formerly in charge of Selective Service cases for Criminal Division.
Arnold Vickery	Department of Defense.
<u>Witnesses</u>	
Gerry Condon	Director, Amnesty Project, Clergy and Laymen Concerned; ex-Green Beret medic; deserter.
Steve Grossman	Editor, AMEX-Canada.
Dr. Richard Harger	Professor of Psychology, Jackson State University, Miss.; former Air Force Intelligence Officer in Vietnam with over forty intelligence missions.
Charles Jenkins	Director, Mississippi Federation of Child Development Centers; twice indicted, ultimately acquitted of draft resistance.
Jeffrey Jones	Member of National Veterans Fraternity, New Haven, Conn.; participant in Clemency Program.
Colonel Edison Miller	U.S. Marine Corps, Retired; twenty-four years in Marine Corps; commanded Marine Corps fighter-attack squadron in Vietnam; POW for five years.

Pat Simon

Gold Star Mother; Director,  
Gold Star Parents for Amnesty,  
Boston, Mass.

Bennie Thompson

Mayor, Bolton, Miss.; draft  
resister on CO grounds.

Jim York

Deserter; participated in and  
later resigned from the  
Clemency Program.

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Jack Sangster

Capitol Hill Co-ordinator;  
Executive Director, Fund for  
New Priorities in America



THE BACKGROUND OF AMNESTY

The Nature of the Problem

The Legislative Situation



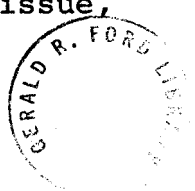
SENATOR HART: Good morning, and welcome all.

It is often difficult to generate much interest in old business, items which should have been dealt with long ago but which, for one reason or another, still remain close to the bottom of our agenda. The amnesty question is such an issue -- at the bottom of our agenda because, understandably, many people want to forget the whole experience of Vietnam; and hard to deal with because amnesty is one of those political issues that doesn't yield to consensus. Perhaps any act inspired by deep emotion or deeply held conviction engenders an equally emotional or deeply held response.

It is because of the hurdles that have long made amnesty an unpopular subject that I am encouraged by the response, both in and out of the Congress, which this conference has received, as I am sure you are.

Our participants today are persons of excellence and represent the range of views on this question. Their personal interest and involvement, whatever their positions on the issue, should help move us toward a better understanding of the issue and the road to its solution.

To my colleagues in the Congress who have joined as co-sponsors of this discussion go my very deep thanks. No politician would suggest that amnesty is a "winners" issue,



and their support in airing the problems of our deserters, evaders, and servicemen with bad discharges is very welcome.

Our purpose today is twofold: First, once again to set out the scope and nature of the amnesty problem. This morning I hope that we can develop the facts. Who are we talking about when we speak of Vietnam deserters and evaders? How many are there? What are the problems they face now and tomorrow?

All too often we forget that potential amnesty recipients are not just a handful of people, some perhaps very happily in residence in Canada or Sweden. There are over 500,000 who are less than full citizens because they violated a law. What difference do these violations make in their lives now, anywhere from three to twelve years after the fact? What has been done and what might be done to end the war for these men?

And second, our purpose is to explore, through an understanding of differing viewpoints, how an amnesty might be fashioned which would be acceptable both to those who receive it and to the majority in the country which would grant it. Everyone in this room knows how many thorny questions there are: veterans' benefits, alternative service, military discharges, reaffirmation of allegiance, and the list goes on.

The question of a case-by-case review of all potential amnesty recipients to insure that only the true conscientious objector receives amnesty is equally important.

And what of the question, "Do we want to continue to punish the teenaged soldier who looked at his own problems, looked at the war, and decided his problems were more important?" That's not exactly the dictionary definition of "conscientious objector." It reflects, at least partly, older people's attitudes toward that war.

So the amnesty question, as we all know, is neither simple nor subject to an easy answer. I hope our discussions today will bring together the component issues in a way that works toward consensus.

The conference is purposely without a formal structure or agenda so that, rather than reciting each of our prepared positions, we can exchange and, I hope, identify areas where we are in agreement. With that accomplished, we can focus our creative energies toward developing answers to the issues which divide us.

I want to quote Justice Oliver Wendell Holmes on the meaning of amnesty.

"A pardon in our day is not a private act of grace flowing from an individual happening to possess power. It is 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."

To me that is the crux of the question -- whether the "judgment fixed" must continue to be applied to those who objected to our presence in Vietnam.





It has been suggested that a very brief summary be made of where we stand legislatively.

What has Congress done? The fact that we are holding a conference today makes it clear that the answer is: not much.

On the Senate side, there are two bills that deal with amnesty. One, the Nelson-Javits bill, would establish a case-by-case conditional program similar to the President's Clemency Board. The other, which I joined with six of my colleagues in introducing, provides an unconditional amnesty for selective service violations and military absenteeism-related offenses.\*

The first bill has been referred to the Government Operations Committee; the second to the Judiciary Committee.

House action on amnesty legislation has been more varied and has progressed further through the legislative process because hearings have not been held by either Government Operations or Judiciary on the Senate side. More than a dozen bills have been introduced on the House side. Some are similar to the two Senate bills and others are broader.

Bella Abzug's bill, for example, would grant general and unconditional amnesty for selective service and absenteeism-related offenses, as well as other violations of military and federal civil law.

The House Judiciary Committee on Courts, Civil Administration of Justice, and Civil Liberties, chaired by Congressman Kastenmeier, has held hearings both on the

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\* Senator Hart's bill and other proposed amnesty bills are summarized in Appendixes 2 and 3.

operations of the President's Clemency Program and on several of the House-introduced bills. Last fall that subcommittee reported to the full House Judiciary Committee a bill that would provide immunity from prosecution and punishment for selective service violators, military absentees, and those who disobeyed an order which, if obeyed, could reasonably have led to the death of another person. The immunity is conditioned upon the applicant's filing of a certificate stating simply that the act was because of disapproval of our military involvement in Indochina. No alternative service is required.

I am told that this legislation has not yet been scheduled for action by the full House Judiciary Committee.

In summary, amnesty legislation is still stalemated in the Congress. Some legislation, including a universal and unconditional amnesty bill for all objectors, military or civilian, proposed by the National Council for Universal and Unconditional Amnesty, has not yet been thoroughly examined. We have asked that today's discussions not focus on the details of specific amnesty bills, but the issues we will discuss must at some point be heard and translated through the legislative process.

SENATOR MC GOVERN: This week the President issued an executive order to the Secretary of Agriculture to make certain changes and reforms in the food stamp program. Now certain reforms are drastically needed -- that is true. But President Ford



issued this order just as the Senate Agriculture Committee was in the last stages of marking up a bill to restructure and improve the food stamp program and preparing to send it to the Senate floor. A lot of hard and thorough work had gone into this bill, yet the President chose to pull the rug out from under us with this executive order to implement his own program, completely ignoring our efforts in the Congress -- the body empowered by the Constitution to legislate.

I mention this now in order to point out what great power the President has -- how he can make changes, give directions, and set forth policies just by ordering that it be done. Right now President Ford has the power to grant an unconditional amnesty and he could do it as easily as he ordered a new food stamp program.

Let me say that if things had turned out differently in 1972 there would have been a presidential order calling for unconditional amnesty and we would not be having this very meeting today. There would have been no need for it.

The true spirit of America is to be honest with ourselves and with our fellow humans. The admission of a mistake is the condition of its correction. One act above all else would signal a return to the ideals of the American Revolution: not a begrudging pardon of the war resisters, who were right; but their unconditional readmission to their country, which was wrong. We must assess and change mistaken policies: we need not belabor any person, least of all the young men who followed their conscience into exile or prison.

SENATOR KENNEDY: I want to commend Senator Hart for taking the lead in holding this conference. I recall that Phil was usually the only senator sitting with me at the hearings of the Administrative Practices and Procedures Subcommittee on Amnesty in 1972.

I hope that this conference and the current declarations in Massachusetts and elsewhere of Amnesty Week will insure that the young men still in exile, those still underground, and those who continue to live with the mark of society's disfavor -- whether as a result of a draft conviction or a less-than-honorable discharge -- because of Vietnam -- will know that they are not forgotten.

A few weeks ago I traveled to Canada on a Health Subcommittee inquiry. Later I received a letter from Joe Bodolai, of Toronto. He wrote: "I came to Canada in 1970 from my home in Ohio as an act of conscious opposition to U.S. involvement in the Vietnam war. Rather than merely 'evade' the inconvenient aspects of the war's effect on me, I chose to publicly resist, to break the law. I made no effort to obtain a legal deferment, which I know full well I could have done. Instead of claiming that I was unhealthy, unfit, crazy or otherwise an unsound specimen of American manhood, I chose to break the law. I am perfectly healthy, perfectly sane. It is perfectly sane to have opposed the war. I could not let the record show that only the sickly, squeamish, or the unfit opposed the war. I was the pride of America.



"I am the son of Hungarian immigrants. A first-generation American. All my life I believed in American history. I did right by it, too. I could have easily carried out the American dream. I was a good student, a good ball-player, I 'coulda been a doctor' . . .

"I want to come home a free and proud man. I don't want to have to ask for forgiveness: I cannot do so. I know that I can easily travel in the U.S.A. with false identification, but I can never do so. I break only unjust laws. I only want to come home with my head held high."

He remains in Canada, exiled, isolated, unable to return home.

Two hundred years ago, we were about to enter our own war of independence, one that split families, friends, and communities. Reconciliation was an essential part of the war's aftermath, when George Washington chose not to pursue either those who had fought against the Revolution or those who had deserted the revolutionary ranks. A short time later he showed the same compassion and mercy when he offered unconditional amnesty to those who had participated in the Whisky Rebellion.

Vietnam produced in its wake a bitterness as deep as either of those two traumatic experiences.

Reconciliation must encompass all of the victims of Vietnam: the young men who lost their limbs, the young men who risked their lives, the widows and dependents of the 55,000 Americans killed in Vietnam, the families of the MIAs.

For too many veterans, the return to America was a return to a land that wanted desperately to forget.

Reconciliation must do more. For if we have done too little for the veteran, we have done even less for the young men who have become outcasts from this land. President Ford deserves some commendation for having taken a first step in breaking with his predecessor and starting the Clemency Program. But it was far, far too little.

Ultimately, that process must grow both from an understanding of the need for national reconciliation and from a renewal of respect for the individual act of conscience.

I recall when Bishop Flanagan of Worcester testified on amnesty before my subcommittee and recited the words of President Kennedy. "War will exist," the President had written, "until the distant day when the conscientious objector enjoys the same reputation and prestige as the warrior does today."

That respect for individual conscience is part of our national heritage, and there is no doubt that it is part of our religious heritage as well. For those young men who refused to be part of the Vietnam war policy for deep personal reasons of conscience, no further penalty should be exacted. They have suffered enough -- whether by serving time in jail or by being separated from their families, friends, and futures.

Cardinal Cushing urged us to look upon them with compassion and understanding. He asked, "Could we not do this in the name of life, and with life, hope . . ."

SENATOR HART: Now I want to introduce Martin Agronsky, who



will be our moderator today.

MR. AGRONSKY: What we want to do today is to bring public attention back to this whole matter of amnesty, which has been curiously overlooked, neglected. In this country people feel it has been dealt with and resolved.

The Senator demonstrated, however, that it has not been adequately dealt with. Certainly it has not in any sense been resolved.

We have facts. We know that over 56,000 young Americans lost their lives in Indochina. We know that 300,000 other young Americans were wounded in that war. We know the problems of psychological adjustment for Vietnam-era veterans who returned -- even for those who were fortunate enough to come back physically unscathed. It has often proven very difficult indeed. Drug habits that were acquired in Vietnam have led to significant difficulties for a lot of them here at home. And, unhappily, an inordinate percentage of the people in this country in jails today are Vietnam veterans.

We know that opposition to the war in Indochina or to the military regime which sustained it has also left its lasting wounds. We know that today hundreds of thousands of Americans are actually fugitives from the law of this country because of their opposition to that war. Thousands of young Americans live in exile abroad or underground in our country for violation of the Selective Service Act or the Uniform Code of Military Justice. In addition, over 700,000 veterans were discharged from military service in a category that is described as a less-than-fully-honorable discharge,

which leaves them with a permanent social stigma and one that has a very significant economic effect. It leaves them virtually unemployable.

Soon after Gerald Ford became President, in 1974, he instituted the Presidential Clemency Program, which everyone hoped would open a new channel for resolving the legal difficulties of some of those for whom amnesty is advocated. It was a three-part program. It involved the Department of Defense, the Department of Justice, and a specially created Clemency Board headed by one of the gentlemen who is on our panel here today, the distinguished former Senator from New York, Charles Goodell. The program faced criticism from many sides.

One of our other panelists today, Phelps Jones of the Veterans of Foreign Wars, labeled the amnesty program, to use his words, a "well-intentioned, albeit unwise, effort."

Another of our panelists, Henry Schwartzchild of the American Civil Liberties Union, called the program "worse than no amnesty at all."

And that is the spectrum in which it is viewed in this country. There are facts. Eighty percent of the persons eligible for the program didn't apply for it. Many who did apply have since dropped out for various reasons that we want to examine today. We know that, for whatever reasons, the President's Panel has not resolved the amnesty issue.

That is what our discussion is all about. How can it be resolved?





Consistently in the amnesty debate, support is heard for programs that are based on a case-by-case review or a system of alternative public service. The Clemency Program had elements of both. Another thing we want to try to do today is explore the practical and, should I say, the philosophical dimensions of implementing such programs.

Amnesty isn't unknown to this country. President George Washington began this country's amnesty heritage by pardoning the Whisky Rebellionists, and he stated then that his intent was "to mingle in the operations of government every degree of moderation and tenderness which the national justice, dignity, and safety may permit."

In one Civil War amnesty, President Andrew Johnson said this: "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."

There was an amnesty following the Spanish-American War in 1898, but only limited clemency followed involvement in World War I, World War II, and the Korean war.

One question before us is whether there is a genuine difference between those wars and our involvement in the war in Vietnam, a critical difference which perhaps calls for a different approach and, more important, which many people believe calls out for a broad amnesty.

What we also hope to do today is focus on some examples of people who went through the machinery of the

Clemency Program and also on some who chose alternative routes to resolve their legal problems. We want to hear what happened to them.

Our goal, then, is to clarify the issues, as Senator Hart has indicated; to examine the alternatives; and to explore what, if any, remedy is possible. And if we can accomplish that, we will have accomplished something extremely difficult.

I wonder if the remedy, which is certainly the philosophical approach, might not best be found in the words President Ford himself used on August 9, 1974, when he was sworn into office. Mr. Ford, you will remember, began his inaugural speech with these words:

"My fellow Americans: Our long national nightmare is over. Our Constitution works. Here the people rule. But there is a higher power, by whatever name we call Him, who ordains not only righteousness but love, not only justice but mercy."

I, for one, am perfectly willing to use the President's words and his philosophy as perhaps the best approach for any of us to take to the problem we want to deal with today.

As Senator Hart has indicated, there are diametrically opposed points of view. Since we want to address ourselves primarily to the facts, and then to see from a consideration of the facts if we can emerge with some solutions, we can usefully begin with a gentleman who has



the facts at his fingertips, the Reverend Barry Lynn of  
the United Church of Christ.

THE MAGNITUDE OF THE PROBLEM

The Statistics of Amnesty



REV. LYNN: You know, Disraeli said there were three kinds of lies. He said there were lies, there were damn lies, and then there were statistics. I believe, however, that the statistics I want to present today about the magnitude of the problem of amnesty in 1976 are relatively conservative figures. Most of them come directly from governmental sources. And I have my friends from the Department of Justice and the Department of Defense sitting next to me to clarify any errors they believe I have made.

I would like to start by saying that there are over one million people in the United States today, or in exile abroad, who would benefit from a broad and total amnesty.

On the question of draft resistance, most of the figures I will present cover the period 1963 to 1973, the Vietnam era as defined by the Presidential Clemency Program. But I would like to suggest, as some of the legislative proposals also indicate, that the genuine Vietnam period is much broader than that. Actually the period runs from 1961, when our first military advisers went to Vietnam, through May of 1975, when our last GIs left Indochina.

There are 4,400 known draft evaders still being sought by the Department of Justice, still facing a possible penalty of five years in prison and a \$10,000 fine. Through the work of Senator Hart and Senator Kennedy and others here, we have the list of those persons. The Department of Justice



released to counseling organizations around the country the list of those still in need of some resolution of their cases and still in legal jeopardy.

However, persons not on that list included many who had never registered for the draft at all. They had never become involved in the selective service machinery because they had never gone to register with their local draft boards. Former United States Attorney General Ramsey Clark, who now supports amnesty but paradoxically was the Attorney General when many of these indictments were first brought down, told me a few weeks ago that he believes there are one million Americans who did not register for the draft during the Vietnam period.

But even using more conservative figures presented in congressional testimony, there are clearly 100,000 to 300,000 Americans who did not register. And unfortunately they face possible prosecution and possible jail sentences and fines.

Also in the draft resistance category are some 8,700 men who have already been convicted of draft law violations. They have been convicted of refusing induction, of refusing to go to a physical examination, of refusing alternate service, or of some other violation of the selective service laws. Those persons have already been convicted, but they have a felony record now that, by law, keeps them from many kinds of jobs, and is certainly an enormous social stigma as well.

There is a final category of draft resisters who are all living abroad, many of them in Canada. Because of laws in foreign countries they have had to acquire foreign citizenship, and thereby were ineligible for the Presidential Clemency Program and are also now excludable under the immigration laws of the United States. Although many in this group are not actually charged with any kind of draft offense, they are in a category that the Immigration Service calls persons who avoided or evaded service or training in the armed forces. They number 7,500 men. They are all potentially excludable from even visiting the United States, even though technically they have broken no law.

When we turn to the question of military resistance, we find figures ranging from 4,000 to 8,000 military deserters at large. The Defense Department says there are 4,200, but during the clemency period we discovered as counselors that many of the people who thought they were deserters -- and in fact were, and had been underground for years -- were not identified as such by the Department of Defense. The Department of Defense was considering them as either still in active service or already discharged.

Next is the enormous number of people from the Vietnam era even as defined by the Clemency Program -- 425,000 veterans with less-than-honorable discharges. Most of these discharges were given administratively rather than through a court-martial or trial. Nevertheless, they severely limit a man's opportunity to get a job. And they severely



limit the person's ability to get his Veterans Administration benefits.

If we include the broader period, then we have the number that Mr. Agronsky mentioned -- over 700,000 people with less-than-fully-honorable discharges. People could get those for just about anything, but many of them were related to absenteeism from Vietnam or refusal to obey orders to be sent to Vietnam or other kinds of offenses that were clearly antiwar in nature.\*

I would like to mention a few of the classic cases of people convicted under the Uniform Code of Military Justice who now have some of these less-than-honorable discharges.

A famous case involved a Lieutenant Howe, a reservist, who one day, while out of uniform and off base and off duty, participated in an antiwar demonstration at a local southern university. When he returned to his base he was tried and convicted for violating Article 88 of the Uniform Code of Military Justice, which prohibits the use of contemptuous words against the President, the Vice President, or members of Congress. He now suffers with a bad-conduct discharge for that so-called offense.

Similarly, many black soldiers in Vietnam realized that there were certain racial implications to the American participation in Vietnam and protested very vigorously their being sent to Vietnam. In one famous case, a black Marine was

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\* A summary of the figures cited by Reverend Lynn appears in Appendix 1.



given a ten-year sentence and a dishonorable discharge for talking in his barracks with his fellow Marines about the racial implications of the war and why he thought black people should not fight there.

Dr. Howard Levy, a dermatologist, when asked to conduct a clinic to train Green Beret medics to go to Vietnam, said his medical ethics precluded his training Green Berets. In his statement refusing that order, he also announced that he felt black people should not fight in Vietnam because they would then have to come back here and fight in the cities for decent treatment. That earned him a less-than-honorable discharge for violating something called Article 133, which prohibits an officer from engaging in conduct unbecoming an officer and a gentleman.

I could go on, and many of the participants here could go on, for a long time giving other illustrations of veterans with less-than-honorable discharges for their opposition to the war or to the Vietnam-era military. The number is staggering: 425,000 up to 700,000 Americans.

I suggest that the last category of persons to consider is civilian war protesters, many of whom still have felony convictions because of their opposition to the war.

There is a very sad case involving a fifty-year-old nurse from the University of Chicago named Jane Kennedy. She is now in the Alderson, West Virginia, federal penitentiary for a lengthy term that she began to serve a few months ago



for the destruction of draft records.

And there are literally tens of thousands of Americans who have been convicted of either federal misdemeanors or federal felonies because of actions in direct opposition to the war in Vietnam, many of them not as dramatic as the destruction of draft records. Many Americans were convicted of federal misdemeanors simply because they did not obtain the proper permits to parade or protest on federal property.

All these people need an amnesty if their legal and social stigmas are to be removed. All these people number, as I said, over one million. And unless all of these people get some kind of resolution of their cases, I don't think the question of amnesty will ever go away.

THE PRESIDENT'S CLEMENCY PROGRAM



SENATOR GOODELL: First of all, the President's program reached roughly 21,000 people, of whom about 16,000 were eligible for action by the Clemency Board. This leaves aside the Justice Department and Defense Department programs.

In terms of straight statistics, if you are judging the success of the program, the Defense Department program was by far the most successful, and it had the largest percentage of participants.

The Defense Department had to deal with estimates in giving us statistics, and we relied upon its staff to tell us the number of people who were eligible for our program who had been in the military in one form or another, gone AWOL, and been picked up and punished. Their rough estimate to us the first day after I was appointed was over 200,000 people. In fairness to the Defense Department, it didn't categorize the individuals on the basis of their eligibility for the Clemency Program, the standards that were used by the President.

That figure of over 200,000 was refined down rather early to about 100,000. So we in the Clemency Board dealt with roughly 15,000 to 16,000 people out of a total of eligible military and civilians of about 100,000, a 15 percent rate.

It is, I think, the unanimous view of those of us who served on the Presidential Clemency Board that that per-

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centage would have been significantly higher had there not been so much misunderstanding about the program. Everybody generally knew that the Clemency Program was there for those who went to Canada or who went underground, who resisted the draft. And, understandably, the focus of public debate in the media was what these fellows in Canada were going to do. That was a very small percentage of those who were eligible for clemency.

In the Clemency Board we dealt with those who had already been punished -- those who had received bad discharges for AWOL or had been punished for a draft offense. They had turned themselves in or they had been caught, and they had been sentenced in federal court for a criminal offense.

I think it should be understood that the Clemency Board itself was very selective. We had twelve aggravating factors that we marked individually as we took cases, and sixteen mitigating factors.

Among the most mitigating factors was a low educational level, inability to cope with responsibilities. We had a fairly significant number of individuals who were, in military terms, in Category 4 of intelligence, below an Armed Forces Quotient Test score of 30. That was the level at which, prior to Project 100,000, inaugurated by Secretary McNamara and President Johnson, individuals were not eligible to be taken into the service because of mental deficiency.

If we had individuals in that category, absent any very serious aggravating factors, we normally gave them a

pardon outright -- no alternative service required -- on the simple basis that they never should have been taken into the service.

Anybody who had evidence of clear conscientious feeling in opposition to the war also received an outright pardon, with no requirement of alternative service by the Presidential Clemency Board.

Of our civilian applicants, 81 percent received outright pardons with no requirement of alternative service. For them, that is unconditional amnesty. Those who applied and who were given clemency by the Clemency Board, with no requirement of alternative service, received a pardon from the President of the United States for their offense, whatever it was, and were not required to do any alternative service.

About one-third of our military cases received outright pardons with no requirement of alternative service.

I will add one other point that I think is rather clear. Great differences of opinion are represented here. My Executive Director, chief counsel of the Clemency Board, is sitting over there between Henry Schwartzchild and Phelps Jones. There is no way you could have a program that would satisfy both of those gentlemen, from the ACLU and the VFW.

I think the President was very courageous in addressing this problem. Those of us who dealt with the program feel that we did a great deal of good for many individuals. About half of the 15,000 to 16,000 people who applied to the Clemency Board received outright pardons with



no requirement of alternative service. They have received, in our view, substantial help.

In addition, I should point out that people misunderstand a little bit the nature of those who applied, and we have to use that as a basis for judging the total profile of those eligible for clemency. About 7 percent of our applicants evidenced some kind of conscientious feeling or opposition to the war in Vietnam, and about 27 percent of our applicants served in Vietnam. Most of our applicants were not in the conscientious category. They were individuals who fouled up, who had many, many difficulties and many deprivations and many burdens. As a result, they got into trouble. And ultimately they heard about the program and applied to us and received clemency.

Finally, let me say that there was so much misunderstanding about this program that in the early stages, the first four months -- we were put into business September 15, 1975 -- the Clemency Board received fewer than 1,000 applications. We then started a public relations campaign.

In January our applications were 5,000, compared to 1,000 in the first four months. In February they went up to 6,000, and in March, when the program ended, to 8,000. It was unfortunate that the program was not extended for a longer period of time.

MR. STONE: After hearing about the President's courage -- with all due respect to Senator Goodell, whom I admire and respect -- and the quotation of the mellifluous words in Ford's opening message as President, we ought to paint the backdrop of this hearing.

The greatest malefactor of the Indochinese war is a free man and a public celebrity in China, while we are trying to awaken the country to the miseries of hundreds of thousands of people of conscience. The background of the Nixon pardon belongs in this hearing.

At the foundation of the Republic, in the administration of George Washington, when Thomas Jefferson was Secretary of State, a pardon office was established in the Secretary of State's office to protect against the obvious possible abuses of the sweeping constitutional grant of power to pardon that was given to the President. Ever since, in either the State Department or the Justice Department, there has been a pardon officer.

A pardon like the Nixon pardon was never granted before in our history. It short-circuited federal regulations and ignored them, and gave a pardon for crimes known and unknown, on a scale absolutely without precedent.

There had to be a little bit of sugar-coating with talk of an amnesty, a limited amnesty. We know that at the White House there were discussions of sneaking in a Nixon pardon by linking it up with a general amnesty for all the boys. Instead, it was Nixon who got the complete pardon, and





we are still trying to get justice for these several hundred thousand people.

I don't subscribe to the verdict that Ford was courageous in his very inadequate amnesty program. I think he engaged in a dirty deal to give his predecessor and the man who made him President a pardon, and that pardon is a scandal, and that scandal is the background of this desperate, pathetic, belated effort to awaken the country to justice for those who couldn't swallow the war and didn't want to engage in its criminality and its dishonor.

MR. AGRONSKY: Mr. Schwartzchild, Senator Goodell contends that the Clemency Board did a great deal of good in the end for many individuals. Could you address yourself both to that evaluation and to the question of whether it did as much as it could have done and what it left undone, and any faults in the operation of the Board's machinery?

MR. SCHWARTZCHILD: The war in Vietnam was the longest, the bitterest, and most divisive war that this country has ever experienced. That is the context of the question of amnesty and of the Clemency Program which Senator Goodell is so pleased about. The Clemency Program was in truth a contribution of the war policies of this and prior administrations.

The program said and tended to confirm in the minds of the American people that those members of the young generation who refused to participate in the war, whether for definably conscientious reasons or not, were the criminals

of the Vietnam era. It wanted to assert into the bargain that these are the criminals, and that, generous, humane, and lovable as we are, we shall punish them somewhat less than the law might otherwise have.

Those were the assumptions of the Clemency Program. It then proceeded to exclude the vast majority of those young men and women in their teens and twenties who would benefit from universal, unconditional amnesty.

It proceeded to implement this fragmentary, punitive, hostile, and niggardly kind of clemency program with an enormously complicated apparatus involving three agencies of government which were by their very nature profoundly hostile to the commitments of the war resisters -- the Department of Defense, the Selective Service System, and the Department of Justice -- and to institute one new agency, Senator Goodell's Presidential Clemency Board, which was largely useless.

Statistically speaking, the Defense Department was, as Senator Goodell said, the most successful because it did in fact offer unconditional amnesty to military absentees. So the largest proportion of men eligible for the Clemency Program who did apply for and receive clemency came under the jurisdiction of the Defense Department. About half of those eligible were granted clemency.

The Department of Justice, which had jurisdiction over accused draft violators, received applications from fewer than 20 percent of those eligible. And in over 75



percent of the cases, it imposed upon them arbitrarily, through the sentencing function of the prosecutors, the maximum two-year sentence of alternative service.

The Selective Service System's administration of the alternative service obligations under the Clemency Program is a shambles. The statistics on that aspect of the program are an extraordinary testimony to the inadequacy of the Clemency Program and the inefficiency and uselessness of the Selective Service System.

The Presidential Clemency Board dealt with approximately 30 percent of those who were declared eligible for that part of the Clemency Program. As I said, they were a tiny minority of those who require universal and unconditional amnesty. It offered to those 15,000 or so people whom it processed essentially useless remedies. Over half the people had never committed an offense but were administratively discharged from the military service. It offered these men a presidential pardon which they did not need since they had never been convicted of an offense. It offered them a clemency discharge which had no significant advantages over the less-than-honorable discharge they already had, in exchange for serving additional punishment imposed by Senator Goodell and his colleagues beyond the punishment they had already undergone and fulfilled subsequent to their sentencing by either civilian or military courts.

It seems to me that this Presidential Clemency Program was more than hurtful in its intentions and useless

in its implementation. Ultimately, and most important, it taught the wrong lessons to the American people.

The political and military leadership of this country who were involved in what Mr. Dunbar has very eloquently called the vast mismanagement of this country's affairs during the past decade, have not been called to accountability for their acts or for their violations of the United States Constitution and of international law. They continue to sit in high places in our society, in government, in private industry, and in other agencies.

We have in our country the flower of the young generation who refused to participate in the Vietnam war, who in many instances, in the light of the growing doubts about the justifiability of that undertaking, let personal priorities take precedence over the demands of the government that they expose themselves to killing and being killed in the rice paddies of South Vietnam. Let us put an end to that tragedy as well as we can, and an end to the continuing production of American war victims in the context of a war that we finally brought to an end. Let us stop making war casualties. Let us have an amnesty.

The Clemency Program did not accomplish this. As Izzie Stone correctly said, it was not an act of courage; it was an act of evasion. We have had enough evasion from our national leadership. Amnesty would at least be one step in the direction of restoring confidence in the fundamental notion that this country can exercise power not only against



the world and against its own citizens, but also in the interests of justice and equity and human decency.

MR. PHELPS JONES: Betraying my military mind at the outset, I will set the factual framework, as I have been asked to do, and I will refrain from any philosophical *démarche* at this time.

A couple of points of fact. In regard to Barry Lynn's very able wrapup of the Howard Levy case, the Supreme Court did review it and the General Article was upheld by the Supreme Court.

Another fact. The American involvement in Vietnam did not end in May 1975. It ended when, due to the good offices of Senator Kennedy, two young Marines returned to this country a few days ago.

Looking for areas in which we might agree, it strikes me -- and it is a point Henry Schwartzchild and I agreed on several years ago -- that amnesty, like abortion, is one of those things which the political instinct, so ably described by our host, doesn't really fit. We are not talking about tires, we are not talking about acreage allotments. And perhaps this very admirable and sincere effort of our people fell short for that very reason.

We all know that conditional amnesty is a contradiction in terms. The proposition is either right on its merits or wrong on its merits. It is truly rather like that other issue of equal emotionalism -- abortion. I am grateful

to Meg Greenfield for her very insightful article in Newsweek magazine a week or two ago, in which she spoke of that burning issue as not being resolvable in classical political terms, that is, splitting the difference so that everyone winds up at some endurable level of dissatisfaction, or perhaps a little better than that.

As I promised, I will not launch into a sort of "let me count the ways" version of why we oppose amnesty at this time. But I will tell you that our organization went all out on announced and presumed presidential candidates, stating our position on amnesty and calling upon them to let us know their views.

MR. AGRONSKY: There are numbers and there are human beings. There are a lot of ways to look at the Clemency Program and at the problem of amnesty. Perhaps the best way is through the experience of a young American who was charged with desertion and who chose to move through the program. Perhaps through his experience we can evaluate how the program worked, how the machinery operated, and what it has done to individuals.

I would like to call on Jim York.

MR. YORK: I grew up in Winfield, Kansas. I deserted from the Army in 1969, after being drafted. I served in the Army for a total of seven weeks. Then, after seeing and talking with people who had gone to Vietnam and who had come back -- and who didn't really know why they were there or for



what purpose they were there -- I realized I could no longer participate.

So I decided that the only thing I could really do and be at peace with myself was to go to Canada. I spent six years in Ottawa, Ontario.

I don't regret going to Canada. There were good times and bad times there, but I never really felt like it was my home, and I didn't become a Canadian citizen. I am an American, and I always wanted to come back, but I was afraid to come back.

In October of '74, the Army sent a letter to me saying that this was my chance to come back to the United States. Because I wanted to come back, I decided to participate in the Clemency Program. I returned to the United States and, as instructed, turned myself over to the military at Fort Benjamin Harrison, in Indianapolis, Indiana.

MR. AGRONSKY: Who dealt with you there?

MR. YORK: Well, not any one person -- it was very relaxed. Most of the people were sympathetic, but they didn't tell me much about the program or what options there were in it. The only thing I was really told was that I should go through the program and finish any alternative service that was issued to me; and if I didn't, I could be arrested and I could go to jail.

So I accepted the alternative service proposal, which was that I work for twenty-four months at a nonprofit

job, any kind of job for a nonprofit organization, but I had to find my own job.

Two months later I found a job with the Parks Department of the City of Lawrence, Kansas. In the meantime I lived on borrowed money. In the two months that I was looking for a job, I had to borrow about \$300.

MR. AGRONSKY: What happened with the job?

MR. YORK: Well, I worked for about one month and I really thought that my problem was more or less over with. I had the job and I was willing to go through with it. And everything was fine, so I thought.

Then the Lawrence town council, led by Mr. Wesantee, a local insurance agent and the head of the Marine Reservists in Kansas, discovered I was working for the City of Lawrence under President Ford's Amnesty Program. And Mr. Wesantee decided that I was ineligible to work for the City of Lawrence because I was hired under the President's program. So there was a town council meeting and they voted to have me removed from my job.

The City of Lawrence tried to keep me on. They fought for me for about two weeks, until finally Wesantee took his case to the Kansas Labor Board. And the Kansas State Labor Board had me removed from my job. Their argument was that someone else equally qualified could have had the job that I had.





MR. AGRONSKY: Did you have counsel at this point? Did you ever have an opportunity to plead your case? Did you point out that the job had come to you because of your effort to take advantage of the provisions of the President's Clemency Program?

MR. YORK: No, sir.

MR. AGRONSKY: Were there any hearings at all?

MR. YORK: No, there weren't. I told the Clemency Program people in Lawrence what had happened and apparently the Kansas Labor Board had gotten in touch with them, too. The clemency people decided I would have to find a job that no one else wanted. That's what they told me. I had a difficult time trying to figure out just what kind of a job no one else would want. I think they did, too, because they never found a job.

MR. AGRONSKY: You never found a job?

MR. YORK: Nor did they. They tried to help me find a job and they couldn't. I spent about a month trying to find a new job, getting more and more in debt and owing money to my family and friends. So finally I just decided to find a job on my own, whether it was qualified for the Clemency Program or whether it wasn't. I mean I didn't have much choice. I needed the money.

So I went back to my home town of Winfield, and I found a job that didn't qualify under the program. I went

to work for a plant shop.

I had been working in the plant shop for about three months, I guess, when one day a woman came -- I don't remember her name, but she was from the Clemency Program. She had a statement that I was to sign, and the statement said that I had decided to decline to participate in the program.

MR. AGRONSKY: She asked you to sign that?

MR. YORK: Well, she asked me if I wanted to. I had the choice of going on with the program or signing myself out of it. So I decided to sign. The woman just said, "Of course, you know that you are liable for arrest now," and I said, "Yes, I understand that." That's all that was said.

MR. AGRONSKY: When did this happen?

MR. YORK: I signed the statement, I believe it was in June of '75.

MR. AGRONSKY: And the gist of it was that you understood that you were liable to arrest if you did not finish the program and that you withdrew from the program, in effect?

MR. YORK: Yes, I did. They had attempted to find a job that was suitable for the program. When the woman came to see me she told me that they had tried to find a job for me but couldn't. And at that point I didn't really care. All I wanted was just to have a job and be able to support myself, whether it qualified under the rules of the program or whether

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it didn't.

MR. AGRONSKY: Were you arrested?

MR. YORK: No, I wasn't, and I have never heard any more from the Clemency Board.

SENATOR GOODELL: Jim was not eligible for the Clemency Board Program. He went through the program of the Department of Defense because he was a military fugitive. The woman he is referring to, I presume, was from the Kansas State Selective Service System, which was charged with the responsibility of trying to help him get a job.

I think it should be made clear that almost from the outset there was never any question that those who went through the Department of Defense program were not going to be arrested and were not going to be prosecuted. They came back and were processed through Fort Benjamin Harrison, and in about twenty-four hours to three days, they got an undesirable discharge. And if they wanted to do the alternative service, they could change the undesirable discharge to a clemency discharge, which is not really very much help. If they don't do the alternative service, they just remain with their undesirable discharge, but they are not subject to prosecution.

It is different under the Department of Justice program. The Department of Justice is for the draft evaders who are still fugitives. They come back as civilians, never having been in the military, and if they are given a period

of alternative service, they must do that alternative service or be prosecuted.

The Department of Justice has indicated that is the policy; isn't that correct, Mr. Vayda?

MR. VAYDA: All right, Senator, I accept the description.

MR. AGRONSKY: I want to ask the Senator a couple of questions, but first I would like to make the observation that we invited a member of the Selective Service Board to be present today, and why he declined I don't know.

Senator Goodell, I would like to ask you this: Here is a case of Jim York, American citizen, who attempted to go through the process that has been established here. I don't know that it's significant whether it was the Department of Defense or the Justice Department or the Clemency Board. He submitted himself to the process. The process didn't work. He remains with a less-than-honorable discharge. He will have to go through life with a stigma, unable to get rid of that really degrading label. Wherever he goes in the future he will always be categorized that way. Do you regard this as a just solution to his problem?

SENATOR GOODELL: I certainly feel great sympathy for Jim. I would say that you overstate it, however, when you say he hasn't gotten any benefit from the program. He is now back in this country; he is no longer a fugitive; he is not subject to prosecution.



I think it is very unfortunate that he wasn't able to hold a job and do some alternative service and change his discharge to a clemency discharge. I think it is unfortunate that he couldn't be offered a better solution.

On the Clemency Board, if he had been convicted and sentenced in federal court we probably would have given him an outright pardon with no alternative service at all.

MR. AGRONSKY: Senator, don't you think it's really grotesque that by submitting himself to the process he should end up in the position he is in today? Regardless of what the machinery intended to do, we see what it has accomplished. Don't you feel that something should be done about Jim York and the Jim Yorks of this country? Do you think they have been treated fairly as American citizens?

SENATOR GOODELL: I would not have constructed the Clemency Program the way it was constructed. We tried to make that Clemency Program and the Clemency Board work as well as we possibly could and as clemently as we possibly could. I would be the first one to say that there are many cases such as Jim's where I wish he had gotten more benefit. It is unfortunate that he is not able to do his alternative service and finish up with the program.

Henry Schwartzchild would be the first one to tell you -- and I agree with him -- I think you are smarter right where you are, Jim, because if you work two years in alternative service and change the undesirable to a clemency

discharge, you haven't accomplished a hell of a lot.

The reason the military got the larger proportion of participants was this exact example right here before us. If a guy was in Canada and he wanted to just come and visit his family, he could come back, in three days be processed through Fort Benjamin Harrison, get an undesirable discharge, and cross the border freely. From that time on he was no longer a fugitive. He got a real benefit.

The unfortunate thing Jim wants to establish here is that he has an undesirable discharge, and that does live with him, I regret to say.

MR. AGRONSKY: What can you do about it, Senator? One of the purposes of this meeting is to see that justice is done in the case of Jim York and those like Jim York. What can be done?

MR. VICKERY: I am here as a representative of the Department of the Army.

There are, I think, at least two separate avenues of possible relief for people in Mr. York's situation. The first lies with an approach through the Presidential Clemency Program to the Selective Service System. The Selective Service System was charged with the responsibility for finding alternative service jobs. If they are unable to find him an alternative service job, then the State Director of the Selective Service System is certainly empowered to make that known, and in effect, because of the inability of the system to come up



with a job for this man, to provide him with the benefits of the program; that is, to get his discharge changed from an undesirable to a clemency discharge.

Second, within the Department of Defense there are available administrative mechanisms for a review of the discharge. He can apply to the Army Discharge Review Board, and thereafter to the Army Board of Corrections of Military Records, so that there are available remedies to change the character of the discharge if that is appropriate, both within and without the Presidential Clemency Program.

MR. AGRONSKY: What would you recommend to Mr. York?

MR. VICKERY: I would recommend to Mr. York that he be in contact with the State Director of the Selective Service System in Kansas, that he make known to him the fact that he tried to operate within the system, that the system failed to provide him with an alternate service job so that he could complete his period of alternate service, and then ask for a certain date from the State Director for the Department of Defense, indicating that he has discharged his alternate service obligation.

MR. JEFFREY JONES: I have been trying to upgrade my discharge for approximately seven years, to no avail. I have an undesirable discharge for being AWOL. I found that out through the Clemency Program, after seven years of not knowing why I was discharged. Not only did I not know why I was dis-

charged but I also had no way to go about changing the discharge. I came to the Clemency Program to try to receive the veterans' benefits that I feel are rightfully mine. Of course I haven't received those either. But I do have a piece of paper from the Clemency Board that I would like to give back to Mr. Goodell if the opportunity ever comes up.

There is really not much going on in the way of upgrading discharges or receiving benefits, but there are a lot of people hanging around with nothing to do because they were lucky enough to come under the Clemency Program, and that's where I am at.

I would like to point out what is happening and state exactly where I stand -- which is with many other minority people in this country who are in the same predicament. To get on with solving those problems, I am willing to do whatever is necessary.

MR. AGRONSKY: Phelps Jones, we have heard from two of those who attempted to participate in the program. Would you like to make any observations about their experience?

MR. PHELPS JONES: Number one, of course, in relation to Mr. York here, obviously, in the little odyssey he undertook, there is a failure of leadership. Because the very second he received a dishonorable discharge from the military, the military could not arrest him for any reason at all. As has been pointed out by Mr. Goodell, he then could not be arrested





by the civilian authorities either. So whoever the person was who told him, "You are susceptible to arrest," certainly did him no service, and I am glad that could be straightened out here.

On the matter of where does justice lie in his case, I have to go back to what Senator Hart said at the beginning. If we accept the fact that the Vietnam war was unique in its horror, its divisiveness, its brutalizing and dehumanizing effects, and all the rest -- if that is all the Law and the Prophets, this young man has a case.

I don't believe it is. He was a wartime deserter. He is free to move about. Wartime deserters, right through the Korean war, suffered far, far harsher penalties.

I have no bit of vindictiveness in my heart for Jim and for many others like him. I hope they can work their way back in quickly.

Returning to what Mr. Goodell said, while we felt that the President's effort was a bit redundant, perhaps, and did bring out a jerry-built, Rube Goldberg kind of contraption -- we have just heard some testimony to that effect -- nonetheless, there was some positive good done for some people. All of us should be honest enough to recognize that.

I am not entirely clear about Mr. Jones's situation. What is your status now? I missed that in your remarks.

MR. JEFFREY JONES: I still have an undesirable. I understand I got the clemency because I just missed a couple of bed checks.

MR. PHELPS JONES: You say you have a clemency discharge?

MR. JEFFREY JONES: Right.

MR. AGRONSKY: Do you have a less-than-desirable discharge at this point or do you have a clemency discharge?

MR. JEFFREY JONES: I think I have both.

MR. PHELPS JONES: Well, I think you should have one or the other. Mr. Agronsky or Mr. Goodell could straighten us out here. But I think the clemency is, for whatever it's worth, probably a little better.

MR. BASKIR: The intent of the clemency discharge is to have it a neutral discharge, being neither less-than-honorable nor honorable. You went through the Clemency Board, is that correct?

MR. JEFFREY JONES: Yes, I did.

MR. BASKIR: And you have a pardon. Despite what Henry Schwartzchild says about the value of a pardon, I am not sure what other legal consequence could be given by the President other than a pardon. It is the highest form of legal and constitutional clemency that is open.

SENATOR GOODELL: Were you asked to do any alternative service?

MR. JEFFREY JONES: No, I wasn't.

MR. BASKIR: I would suggest at this point that you go back



to one of the processes that Mr. Vickery mentioned, the Discharge Review Board, with your pardon. I believe that when they review your case they should give full force and effect to the pardon the President gave you for those violations of military law, which were the AWOLs, and review your service record without regard to those AWOLs, and consider the upgrading of your discharge to a general or honorable with the benefits that come from it, giving, as I say, full force and effect to the pardon the President has given for those offenses.

SENATOR GOODELL: We did not have names of individuals in the applications that the Clemency Board members themselves reviewed. When an individual applied he was given a designation. So I don't remember Mr. Jones's case and couldn't identify it. But I can say that the Clemency Board must have reviewed your case as a very worthy one. You got the best disposition that was available from the Clemency Board -- an outright pardon with no requirement of alternative service.

MR. PHELPS JONES: The VFW and the American Legion say that in cases like those of Mr. Jones and Mr. York, the law requires that they be allowed to appear before Boards of Corrections of Military Records which review discharges. So forget any philosophical reservations you may have. If you want some political muscle, stop by the VFW shops; we will help you.

MR. AGRONSKY: A significant point to be made here is that we are already seeing the difficulty of dealing with these problems on a case-by-case basis. There are so many, and the machinery to deal with them is so inadequate; they are so time-consuming, and the personnel to deal with them is so inadequate numerically. I am not speaking in terms of capacity of experience.

It has been estimated by the experience that you have had with your board, Senator Goodell, and that the Departments of Defense and Justice have had, that if all the cases extant were to be dealt with in the way these boards and these agencies have attempted to deal with them so far, it would take beyond the turn of the century to get to them, which is a terribly depressing thing.

SENATOR GOODELL: That isn't true, though.

MR. AGRONSKY: The arithmetic would seem to demonstrate it.

SENATOR GOODELL: First of all, I dispute that there are one million or 500,000 out there who are eligible for this program. But even if there were, the processing system that the Clemency Board and the Defense Department and Justice Department set up could process them in a relatively short period of time.

Let me also say that I don't agree with your conclusion that Mr. Jones's case, for instance, shows that the process doesn't work. Mr. Jones would be absolutely no better



off with unconditional amnesty than he is right now. He got unconditional amnesty.

MR. GROSSMAN: Mr. Jones has no veterans' benefits whatsoever.

SENATOR GOODELL: He wouldn't get that; he would get a pardon under unconditional amnesty. What has he done to earn veterans' benefits?

MR. GROSSMAN: He has given his youth and a decade of his life.

SENATOR GOODELL: That's another argument, but unconditional amnesty would give him exactly what he has now -- a pardon from the President of the United States. He got the pardon outright, and that is just what unconditional amnesty would give him.

MR. AGRONSKY: Professor Sax, Senator Goodell makes the point that the number of cases that are unresolved and the machinery that is available to deal with them is such that they could be dealt with on a case-by-case basis, and that a sufficient amount of time could be given to those that are unresolved. This is your area of expertise, and your experience with these cases has been primarily in trying to examine them on a case-by-case basis. Is Senator Goodell right that the mechanism exists?

MR. SAX: I am not sure I want to respond exactly to what Senator Goodell said, but I would like to make an observation.

Some of the comments by people at the table in front of us make clear something that we can all agree on: there is a significant amount of unfinished business in the draft resistance and clemency amnesty problems arising out of the war.

When the people here describe a dilemma that they clearly are in, we hear other people jump in from the VFW or Justice Department or Defense Department and say, "Well, there are means to deal with this, at least there are potentially some means to deal with it." And then they give us a list of the remedies available.

The problem is that we know that there are thousands of people out there, people more or less like Mr. York, who don't know about those means, and they don't have the kind of associations or counsel that plug them into such remedies as might be available. That is the practical problem.

MR. AGRONSKY: Can you propose a solution?

MR. SAX: Sure. There are two solutions.

The first solution is to create a mechanism whereby we can have some confidence that on a case-by-case basis each person whose plight deserves attention will get the attention. That requires the creation of an enormous, expensive and long-standing bureaucracy. If, for example, you read the report of the Clemency Board, you will find that during the time when they were busy with something like 15 or 20 percent



of the total cases that might have come before them, their statistics show that their panels of board members were dealing with somewhere between 100 and 125 cases a day. You don't have to do much arithmetic to see that something like 120 cases even in a twelve-hour day means 10 cases an hour or a case every six minutes.

Even though this is a review process coming up from the staff, you know that no detailed or careful review can be given in that kind of time. If we are going to talk about case-by-case review, what we have to talk about is whether the Congress is going to be willing to create the mechanisms and maintain them over a long period of time, to make sure that we get hold of all of these people and deal with all their cases in a very careful way.

Now I put it to you that that is just not going to be done. It is not in the cards. And therefore it seems to me that the only practical solution is to face up to the fact that what we have is a lot of people, some people whose situation is extraordinarily deserving, some people whose situation is neutral, and some people whose situation is quite undeserving. I am sure Mr. Jones could bring in some people whose cases would be very unattractive kinds of cases.

That is the practical problem. And it seems to me that the only way to deal with it is on a wholesale basis. And if you are going to deal with it on a wholesale basis, you have to face up to the fact that some deserving people are going to get their just deserts and some undeserving

people are going to be free riders on that.

You can do one of two things. You can say that everybody who is out there now has to accept whatever he's got, and it is just too bad for people like Mr. York and others. Or you can take the position that we ought to clean up this mess by taking a general position of amnesty toward these people, and that we will sweep in with that some people who probably, taken case by case, would not be deserving. I think that is the situation.

MR. AGRONSKY: Senator Goodell, I think it would be a mistake to argue that you are unconcerned about the humanistic considerations. I think you are. Professor Sax has demonstrated that because of the way the system is now set up -- and your own experience, I think, also certifies that -- justice cannot be done for all those who are waiting for justice to be done. And he proposes the wholesale general amnesty approach as an alternative solution.

That has been proposed by many of those who have studied this problem and who feel that it is impossible to deal with it on a case-by-case basis because of its magnitude and because of the nature of the machinery that would be needed to deal with it.

I wonder, from your own experience in running the Board, from observations that have been made here this morning, and especially from the observations Professor Sax made, if you could respond to this whole question of why the government cannot reconsider its position and why there could not





be a new approach to this thing; why, in effect, the government has resisted and rejected out of hand this general amnesty and clemency approach.

SENATOR GOODELL: In the first place I don't think it would be an impossible burden, or really that expensive, to deal with future applicants on an individual basis.

When Professor Sax comes to the statistics of six minutes per case, you have to understand that the Board members had summaries of these cases in advance and had read them in advance. They had already gone through and marked up these cases. A Board attorney had spent several hours on the case going through it and presented it to the panel or to the Board.

We had some cases, quite a large number of cases, that took us thirty seconds to dispose of because everybody agreed on the face of it that this was a pardon. If it were somebody, for instance, who had an AFQT score of 8 or 9 or 12 -- which really puts them in a category where you wonder if they can brush their teeth in the morning -- he got an outright pardon and nobody debated it. If it was somebody who was clearly conscientious in his feeling about the war, he would automatically get a pardon.

So many cases we did very, very quickly where there was an outright pardon granted. Other cases we spent several hours debating and had disagreements and had to do votes and reconsiderations of votes. And we had hearings if an individual wanted to be heard. I think the only

cases in which we denied the opportunity to present a case to the Board personally were those in which the Board had already decided to give them a pardon. And we said, "There is no reason to have them bother to come down here and have an attorney; we are giving a pardon with no alternative service anyway."

MR. AGRONSKY: Senator, would you carry it into the future? What we are interested in is what will be.

SENATOR GOODELL: I am open to a variety of suggestions. I think the Nelson-Javits bill has a great deal of merit. I would oppose an unconditional amnesty across the board because I think you end up doing more injustice with that than you do with what we have now.

I think some form of extension of the opportunity for individuals to apply for clemency should be granted. I think it probably could be done with a relatively small unit either independent or in the Justice Department or the Defense Department. I think that could be accomplished without a very large bureaucracy.

I think the numbers would be entirely manageable, and I think the veterans' organizations, such as the VFW and American Legion and the others, would help these individuals.

Perhaps you could do it through an expansion of the jurisdiction and standards of your Military Discharge Review Board. We actually advocated that, and I think it is a very good idea for somebody who has a clemency discharge



to go before a Military Discharge Review Board and try to get his clemency discharge upgraded to a general or perhaps an honorable discharge. In each case, however, it depends on the degree of service.

I think everybody is aware that I opposed the war in Vietnam very strongly. But I think an individual has an obligation to serve his country. Consequently, if he feels he cannot serve his country in a war such as Vietnam, he has an obligation to serve alternative service.

What the President did was grant them -- in effect, all of them, automatically, no reasons given -- the opportunity to do what they would have been required to do had they been granted a CO status at the time they applied for it, two years of alternative service. Of those who had already been punished in one form or another and who came to the Clemency Board, as I have indicated, a very large number were not required to do any alternative service at all.

I think that is a fair approach. It is an approach that I think doesn't satisfy the VFW and the ACLU and a lot of other people, but overall I think it is a fair approach. I was proud to be involved in a program where we could significantly help a large number of people, and I think the opportunity ought to be extended.

MR. AGRONSKY: I am aware of your position on the Vietnam war, Senator, and you know that I began by saying you were concerned about the humanistic problems. But there is also

the point that, as the man who conducted the Clemency Board, you were speaking for and acting for the government. Many people feel that there were omissions and commissions that need correction, and I'm sure the group would be prepared to concede that.

Everybody really wants not so much to lay blame, though there is enough to go around for all concerned, but to ask what we can do about it now. And you have raised some points to which we can address ourselves this afternoon.

Perhaps we can hear from Leslie Dunbar of the Field Foundation, who inspired the first publicity calling for amnesty, in 1971. It would be useful if you could tell us whether you feel that what we have done here so far, in beginning to expose some aspects of the problem, is helping us move toward a solution.

MR. DUNBAR: I have been listening to Charles Goodell, as I have listened to him for a long time now as my Senator and as a man whom I greatly admired during the tough years of the war. And I have read -- I haven't read all of it; it is impossible to read all of it -- the report which he and his Board put out at the end of their program.

Two things about the report struck me as characteristic of the kind of governmental attitude that pervades Washington.

Over and over again in that report we have the President, Mr. Ford, referred to as the giver of grace. It



is not an exaggeration to put it that way. He gave, he promised, he indicated, and so forth.

Then alongside that -- which I think is characteristic of the way we tend too often to look on American government today, and which is characteristic of the way we got into the mess in Vietnam in the first place -- there is such a great reliance on what public opinion polls had to say.

I was impressed by something Senator Hart said at the beginning, which was that amnesty is not a problem that addresses itself to a consensus. I doubt if you are ever going to get a consensus in America as to what should or should not be done about amnesty. Therefore it is all the more important that we have leadership in this country, political leadership, that, without waiting for a consensus, does what is just.

Mr. Goodell referred to the President's courage, and he said he himself was proud to have been involved, and all I can say is we missed a great opportunity to do something very decent and very fine.

Sometimes opportunities come along to reset the course of the country, reset the approach. We flubbed the one on amnesty, and we are not going to recover that opportunity. We are not going to recover the opportunity Mr. Ford had in the wake of his unconscionable pardon of Mr. Nixon, a pardon which could have been made conscionable only by treating these young men with equal mercy.

I have joined with a number of other people who have written to twenty or so people who were high in the Kennedy-Johnson-Nixon Administrations. We said in effect, "You participated in the decision-making of this war, you committed this country to this war; you have gone on from it to high positions in American life. Isn't it the least that you can do to say a word on behalf of amnesty for these young men who are the victims of your decisions?"

We have got back a few replies. General Westmoreland and General Taylor say, "No, we did what we thought was right in Vietnam," and so forth. I can at least respect those replies. I may say they are just about the only ones we have had that in any way defend the war. The rest of them say, "Well, it would be impolitic at this time, for one reason or another, to extend to these young men the same kind of amnesty which in effect we have had."

We are still in the position of having flubbed the great opportunity which was Mr. Ford's. We are still at the point where the only people punished for the criminality of this war are young men who had nothing to do with starting it, carrying it on, or leading it.

MR. AGRONSKY: Mr. Baskir, as former general counsel of the Clemency Board, and having run the Ford Foundation's study of this problem, do you feel you can usefully propose some new approach to deal in some constructive way with the problems raised in this discussion?



MR. BASKIR: I don't think you can hear the eloquent statements of various people at the podium and the individual cases of persons who have gone through the difficulties caused by the war and not be moved by this difficulty. I think very powerful emotional and moral arguments can be made for unconditional amnesty.

I do think, however, that in listening to the conversations and the discussions here we might mislead ourselves as to what the general feeling of people who are in a position to act may be. We have some very distinguished sponsors of this conference. Not even all of them, I think, are in favor of unconditional and universal amnesty.

What we see in the Congress and in the White House is that, however powerful the emotional and moral arguments, the practical arguments, are for unconditional and universal amnesty, those persons in a position to inaugurate that, I guess I can say, are not yet persuaded.

I guess it is also true that as we get further and further away from the immediate situation of the agony of Vietnam, this issue recedes more and more from public consciousness. I think that approaches to the problem which require a public confession of guilt, not only of the individuals who would be the subject of amnesty if this existed for them, but in fact confessions of guilt by government -- for the majority of the people I think that is not a fruitful approach.

I would like to see an approach which focuses on individuals and which, in effect, tries to do something with the personal circumstances of individuals; which does not require this society or the government to say, "We were morally guilty; you were morally right." Not that I don't think that is necessary, perhaps, or advisable, but I just don't think it is actually ever going to happen.

There are some other illustrations I think we can take and focus on this problem. One was the Australian experience. We have talked a lot about what our experience in the past two hundred years has been. Australia had a very interesting experience in that the war in Australia, I guess, was about as divisive as it was in the United States.

One candidate for office, Gough Whitlam of the Australian Labor Party, ran on a platform of unconditional amnesty, and when he came in he inaugurated a program for everybody who was in the service, and didn't want to stay in the service, to leave without any consequences.

I don't know what the consequences have been for Australia's defense, but I think it is probably not proper to say a program of unconditional amnesty would necessarily inhibit us in the future in fighting a constitutional war. In fact, it might help us, in a sense.

Another thing that I think we ought to focus on is the way existing cases are being handled in the courts. We heard about one case the other day of an individual who





was tried and convicted and sentenced to one day's probation, I guess the minimum sentence he could get. After the conclusion of his service of one day's probation, which I gather he served by having lunch with his probation officer, his conviction was expunged.

Let me tie these things together by saying that I don't think that the people in Congress as a whole are now prepared to have an unconditional amnesty which involves moral condemnation of the war. I think that is not practical. I think we can focus on the Clemency Program that happened in the past and some of the weaknesses of it and perhaps try to see if we can't have a program which has some practical appeal in the Congress and some realistic chance of being enacted.

One thing I think that program demonstrated was that it was too short. It was open only for four and a half months and six and a half months. It laid a great premium on learning about it. It was terribly complex. The benefits were meager and the price was high.

I would like to see us focus on trying to devise an approach to this problem which would give the greatest kind of benefits that would be practical in terms of being achievable.

ECONOMIC AND RACIAL ASPECTS



MR. AGRONSKY: One aspect that we touched on this morning but did not examine is a very important part of the whole problem of amnesty. That is the economic and racial aspect of the problem. Economic and racial factors both derive from the same cause.

Statistics demonstrate that in the end only 10 percent of those eligible for the draft went to Vietnam, and that 10 percent was drawn mainly from the lower ranks of our economy in terms of income and economic position, and disproportionately drawn from the blacks in our population.

Mr. Stone will address himself to that.

MR. STONE: I don't want to use these figures on behalf of racial demagoguery. I want to put them in the broadest possible context, in which people from the Defense Department and people like me can find some agreement.

The military men, of course, are concerned with will and discipline, which are necessary components in war. I think that they will not doubt, and none of us will doubt, that if this country were really attacked or in desperate straits, there is no doubt about the courage, the will, the patriotism of the American people of all classes and all ethnic backgrounds. But when a war is waged 9,000 or more miles away that nobody understands and nobody can explain, and that grows more and more obviously irrational and cruel and unworthy, you have disaffection. Because Americans are



a people accustomed to freely expressing themselves and thinking about their lot, it's natural that we should have a large measure of disaffection.

This was exacerbated by the class and racial aspects of the Vietnam war. It was a war from which the rich and upper class benefited enormously, because President Johnson, instead of financing the war by taxation on war profits and high incomes, chose the path of inflation, which caused suffering disproportionately for the unorganized, the poor, the blacks, and the elderly. The inflation not only took a burden off the backs of those best able to pay but fueled one of the great stock-market binges of modern history. The great conglomerate bubble was a sample of it, and hundreds of millions were made on the war boom and inflation boom. The weakness of the dollar and weakness of the economy ever since has been part of the price we paid for the binge.

While the wealthy were making out on the war, it was the poor, and especially the black poor, that bore a disproportionate part of the burden. Although only about 1.5 percent of the members of draft boards were blacks, and only about 18 percent of eligible whites were drafted, 30 percent of eligible blacks were drafted. To the honor of the blacks, it can be said that they provided a very high proportion of volunteers for service, but they came out holding the dirty end of the stick on court-martials and bad service records and dishonorable discharges, which often

reflected their resentment against racial slurs and discrimination in the service itself.

In a society like ours, one of composite peoples, it is very important to develop social justice. Much more fundamental than the defense budget and all the hardware is to develop a sense of unity, a sense of fraternity, and a sense of justice in a society as diverse as ours. That is what makes it important to focus on the fact that the poorer classes and the blacks paid disproportionately for a war that was the source of great profit to the upper class.

And now they are paying disproportionately again. People talk about getting a lawyer and finding the way. Who knows how to find his way around the red tape of the government? Educated people who have been to college, sophisticated people, experienced in business, would know what they could do. They hire a lawyer. They can afford to hire a lawyer, and they pass it off as a business expense, despite their learning and education. How can we expect people who have no experience at all in government, can't afford a lawyer -- how can we put the burden on them of finding their way around a terrible network of red tape?

After every war we have sought to bind up the wounds abroad and at home with reconciliation. Look at all we did for the Germans and the Japanese after the war. Look at the national reconciliation that took place after the Civil War, which was an insurrection and a very terrible war, an important war, a crucial war, not a distant, dirty little colonial war.



It is important for the future, it is important for the sense of social justice and racial justice, to have an unconditional amnesty. Otherwise, the burden on the uneducated, ill-informed poor and helpless, who can't even afford to take a day off from work to go down and hassle with bureaucrats, will just rankle. That rankling, that sense of injustice, is a very bad thing for the future of our country and for the Defense Department.

I want to say one last word. I want to use a dirty word. It is not a four-letter word; it is an eleven-letter word, and it is "imperialism."

This whole morass about amnesty, CIA, all this other business, goes back to the fact that for over a century we have regarded it as a principal function of the War Department -- as it used to be called honestly, instead of the Defense Department -- to protect American lives and property abroad. There was a time when people spoke frankly about these things.

There was a time when two ex-Presidents, Grover Cleveland and Benjamin Harrison, organized an anti-imperialist league and fought against annexation of the Philippines, and said they thought it would be a danger to the Republic to get us mixed up in imperialism in Asia.

There was a time when one of the greatest U.S. Marine Corps generals we've had, Smedley D. Butler, said in 1932, in his memoirs, that he was tired of being an errand boy for Wall Street, which wanted him to go down to Latin

America and kick natives around to collect the debts of American banks.

Our country is a great country. Vietnam was a disgrace. We never would have gotten out of it, and we never would have kept out of Angola, if not for these kids. The Congress would never have had the will and guts and resolution to say no to Angola if it hadn't been for Vietnam.

Instead of looking upon them as deserters and miscreants and semicriminals, we ought to look at these war resisters as people who have written an honorable role in American history. The dishonorable role was written by the Nixons and Johnsons and Kennedys and other machismo people who felt we had to get in there.

To show the whole world that American had a conscience and real freedom of speech and real dissent, people demonstrated. These are the boys we are talking about. And we owe them a debt. It is a debt of honor and gratitude.

MR. AGRONSKY: One of the problems Mr. Stone raises is the whole problem of how, if you have a very low economic status in this country, you can protect yourself in the legal process. How can you afford to do so? And what does it mean when you haven't the economic means to do so?

I think one of our panelists is in a very useful and very well-informed position to deal with that problem, with the whole problem of the legal matters involved in



application met the requirements for a CO status based upon religious convictions. There were things that the board would not consider that should have been considered in my application.

One of the major determinants in my not getting CO classification was that I was working for the Student Nonviolent Coordinating Committee, a national civil rights organization. Because of this, they didn't consider my claim, even when I made a personal appearance before them. They were very hostile toward me. The chairman of that particular local board was a member of the Ku Klux Klan, and it was just impossible for me to get a fair decision there.

I was fortunate to have met an attorney who helped me prepare my case and worked with me until the end to do that. But for many Americans, and especially black Americans, that wasn't the case.

I want to talk about something I heard Mr. Goodell refer to, and that was every individual's responsibility to serve his country through the Selective Service System.

First of all, I have to say to Mr. Goodell that evidently it is not the responsibility of every citizen to serve because, as Mr. Stone pointed out, minorities had to serve disproportionately in the Vietnam war. I can remember cases in Mississippi when a phone call to one of the senators or one of the representatives got some plantation owner's son out of the draft, whereas other people didn't have the opportunity to do that.





That was one of the problems we faced. It never was an equitable kind of situation. It depended on what the local draft board thought about you. If you were in any kind of activity they wouldn't even consider what your circumstances were. And there were other powers-that-be that determined who wouldn't have to go into the Army and who would have to go, so it never has been an equitable situation.

Now, when we talk about what is to happen to the persons of good conscience who've got criminal records, or people who have served time, or people who had to leave the country because they were conscientiously opposed to the war, what is just for them?

If we don't look at it in a vacuum but look at it as a total picture of what was happening in this country at the time, what were the considerations of many of those Americans who had to undergo these ordeals -- if we look at the total picture, we will find there is nothing that will right those injustices except complete and unconditional amnesty.

Having gone through that situation, and having won my case, but understanding the difficulties that any individual who said, "No, I cannot participate in this war, or I cannot participate in wars, period" -- the kinds of ordeals they had to go through, from their families being harassed by the FBI to all kinds of other problems they encountered -- I know that is the only equitable solution to the problem.

The draft itself was inequitable as an institution. It reflects the very worst of society because it says those who have are not required to participate, but those who do not meet the situation, whose families are not influential -- they are the ones who are victims and have to participate. And if they say, "No, I will not participate," they have to face the brunt of the burden. I think that is totally inequitable, and the only way we are going to deal with that is to have complete and unconditional amnesty.

MR. AGRONSKY: Bennie Thompson, of Bolton, Mississippi, was involved and saw at very close hand the whole operation of the selective service process.

MR. THOMPSON: I first encountered the Selective Service System in 1969, when I was elected to the City Council in my home town and shortly after that was reclassified by the Selective Service System. I applied for CO status, and the chairman of the board told me that he would not reclassify me as a conscientious objector. I was reclassified by my draft board in 1969.

The chairman of the draft board at the time, who incidentally is the mayor of the town adjacent to the town I am mayor of now, told me that he would not reclassify me because I had caused trouble in the community ever since I had finished school.

Well, in the process of trying to get my CO classification, I was drafted four times in two months.



Each time I was drafted I had an appeal pending.

I found that certain records had been entered in my Selective Service files. There were letters written by individuals in the community, including the former mayor, that said I had caused nothing but trouble since returning from college. This, I think, was clearly illegal. You are supposed to be notified of all the entries in your record.

The process continued until I lost my teaching job. I had a whole lot of things happen to me. But fortunately, with the help of some legal friends, I did not go into the Army. I have since lost two other jobs because of my stand.

First, it is very difficult for a black person in Mississippi. At the time there was not one black person on the draft board in Mississippi. They subsequently appointed one simply because I had raised all kinds of issues around the problems surrounding my being drafted.

A major problem is that in my community -- and I think Mr. Jenkins said it as well as I could -- many people who had sons eligible for the draft were not drafted. I have friends who died in Vietnam, and that hurt, because I know that had the draft been just and equitable, they might not have gone.

The other thing is that I have friends who are back from Vietnam now who are drug addicts living in little towns. They have not had the opportunity for employment.

They tell me constantly that had they had the nerve to say no, they would not have gone, but they were under the impression that they were fighting for their country and their country would do something for them when they returned. This has been somewhat of a lack.

The draft, by and large, so far as black people in Mississippi were concerned, was just a tool of the society to suppress activist blacks in the community, and that is what it did until it was abolished.

MR. AGRONSKY: There is another pragmatic aspect of the whole question of categories of discharges. I would like to call on Ronald Brown, who is the Washington director of the National Urban League, to carry these observations on from his own experience and studies.

The Sieberling study dealt with questionnaires to 100 of the largest U.S. corporations, in an effort to indicate whether there is discrimination against people with anything but an honorable discharge who apply for employment with them.

Of those who responded to the questionnaires, 73 percent concede that they discriminate against those who hold dishonorable discharges; 62 percent concede they discriminate against those with a bad conduct discharge; 61 percent discriminate against those who have undesirable discharges; 41 percent discriminate in employment against those with general discharges.



An Army study called the Major Jones study surveyed employers, educators, and professional licensing authorities. Of those queried, 77 percent said they were influenced by dishonorable discharges and 34 percent said they automatically rejected those who applied for employment who had dishonorable discharges; 75 percent said they were influenced by and 27 percent automatically rejected bad conduct discharges; 69 percent said they were influenced by and 20 percent automatically rejected those with undesirable discharges; 51 percent conceded they were influenced by and 8 percent said they automatically rejected those with general discharges.

The National Urban League has made a particular study of this particular aspect of the problem, especially as it affects Vietnam war veterans, and those who resisted the draft and were rejected when they tried to get conscientious objector status.

MR. BROWN: Those data are indeed alarming. What they should indicate to us all is that we are perpetuating injustices in a way that makes the punishment far outweigh the conduct which the penalty was intended to stop.

It seems to me that what we have done is create an absolutely intolerable situation. There are some 350,000 Vietnam era veterans who have received less-than-honorable discharges. The data that Mr. Agronsky has just referred to indicate clearly to us the kind of penalty that they must

continue to pay throughout life for a discharge that in many, many cases was unjustified in the first place.

All those who have examined the military discharge system, including blue-ribbon panels and everyone else, have indicated clearly that there was gross discrimination within that system and that many of these discharges were not fairly given.

Further, what we have done is create a situation that has some tremendously discriminatory aspects. That is, we have found that black people, for example, are disproportionately drafted into the military. They are then disproportionately assigned to either front-line duty or dead-end jobs. They are then disproportionately tossed out with less-than-honorable discharges which then trail them throughout their lives and make it very difficult for them to compete economically in our society.

Some of the relevant statistics are really frightening. During the Vietnam era, blacks, for example, were twice as likely as whites to receive less-than-honorable discharges. In the year 1972 in the Marine Corps, 22 percent of all blacks who were discharged from the Marine Corps -- that is, almost a quarter -- were discharged with less-than-honorable discharges. It seems to me that these data are a prima facie case of discrimination in the military discharge system.

The National Urban League has supported unconditional amnesty for quite some time, and in that discussion



we must not ignore the problem of individuals who are faced with a lifelong period of less-than-honorable discharge.

It seems to me that the data are clear. It seems to me that the kind of provisions the Defense Department has made to upgrade those discharges are totally inadequate.

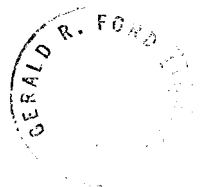
As you recall, initially what was required was that individuals who received those less-than-honorable discharges come to Washington and appear before the Discharge Review Board; then they might have a chance of getting their discharge upgraded. Just that process makes it clear that, again, we have a self-fulfilling prophecy: we are telling poor, black individuals, without any counsel, living all over the country, that first of all they have got to come up with the money to get to Washington. Then if they do not have a lawyer, their chance of having their discharge upgraded is going to be considerably lower than if they did.

The only way to deal with this problem is not by any kind of piecemeal approach, not by a case-by-case investigation, which I think the data prove cannot work, but only through unconditional amnesty, which includes consideration not only for those who did not serve but for those who did and, for reasons many of which were beyond their control, received less-than-honorable discharges.

PROS AND CONS OF AMNESTY

The Question of Deterrence

The Moral Aspects





MR. PHELPS JONES: To begin with, I agree with about half of what Izzie Stone said. It was a poor boy's war; I won't say it was a poor boy's fight. I won't stop there and say it was a rich man's war, because my imperfect understanding of our economic mechanism was that toward the end the stock market soared every time Dr. Kissinger sat down with Le Duc Tho.

Looking at the thing, I will be as practical and honest as I can. You folks who are proponents of amnesty have going for you, number one, the passage of time; number two, the span of attention of our total electorate and the move to let's put Vietnam behind us.

I would like to make a couple of points. There is no historical precedent for what is being recommended today, not in this century and not in any century. The Civil War was a war which, among other things, tested citizens on their allegiance to the state or federal government. And whatever problems we may have with our southern friends, I don't think anybody ever argued that they were too slow in getting to their version of combat.

And Izzie Stone's point that we would all rally round if we were attacked. What we are talking about now is not Pearl Harbor but strategic nuclear weapons. So clearly, I think, it would be in our interest to use what power we have left to avoid those sorts of confrontations.



And if, God forbid, we ever have to fight again, I hope we don't have to find that we are in the kind of last-minute situation it would take to rally people round.

I would agree with speakers who have mentioned the class aspect of the war in Vietnam. I would recommend to you a very fine article written by a Harvard graduate, class of 1970, president of the Harvard Crimson, a Rhodes scholar, violent war protester, and all the rest. In a great act of self-recognition, as I judge it, he wrote: "What was our real motivation?" And he recalled going down from Harvard and MIT, where four out of five were good enough to beat the doctor, I believe, to the Boston Navy Yard, where the reverse was true of what he called Chelsea -- Chelsea being what he termed in his article the white proles. Four out of those five went.

He said, "Were we really right? Have we paid enough attention to the awful suffering done by those people, obviously black and white? Have we really cared about the Vietnam veteran?"

I know it is ritualistic in talking with groups arguing for amnesty to say that there is all this pressure of concern about the Vietnam veteran. In fact, the Veterans Administration budget for this year is down \$1.4 billion from last. I know the figure.

Recently, here in Washington, a jury found that mass punishment had been improperly applied, and the ACLU quite properly got reversals of past judgments against

individuals who were judged to be poorly treated. If mass punishment is wrong, on the one hand, I would suggest that mass forgetfulness -- an act of torpor, really, not policy -- would be equally wrong on the other.

Among other things, the sorts of amnesty I suspect are being advanced would equal a mass burial of due process of the law. And if there is anything that has been going for us, in my judgment, for the last three years, it has been the working of the United States judgment.

Compassion, of course, but the class aspect read by Henry Schwartzchild, the "flower of our youth" argument, is one thing, my friends and colleagues, that I think will make the sort of amnesty you are proposing very difficult indeed of passage.

I won't run through the casualty figures; they are long gone. I would suggest, however, that I haven't yet heard here a rationale that would prohibit what I call full customer choice of war.

The point has been raised about conscience. Conscience is a magnificent value. It is not the supreme value. People are blowing one another up in Northern Ireland today over an absolutely correct view of the hereafter.

MacArthur conscientiously thought he was right; Truman conscientiously thought he was wrong. And MacArthur got conscientiously fired.

Some of the worst acts of the Ku Klux Klan have been done under some kind of conscience, however aberrant.



I think I would agree with the speakers who have indicated that the Selective Service System, and it varied over time, did underscore this class bias. There are reasons for it. It was a patchwork, crazy-quilt thing. Never again, let us hope, will we see anything like that.

MR. AGRONSKY: I wonder if Joseph Sax could address himself to one of the fundamental points you made, in terms of the impact that amnesty might have on the willingness of citizen soldiers to fight as volunteers in other wars this country might have.

MR. PHELPS JONES: Would the people here be willing to fight to keep an American presence in the Panama Canal Zone? I would tend to doubt it. Would the people here be anxious to fight if there were some kind of large-scale intrusion into Western Europe? Once again there would be serious doubts raised.

So the precedent, as I understand law -- once again, I am a layman here -- would be a mass precedent which would excuse all sorts of behavior in future events whose shape none of us can see. In whatever war, over whatever ideology, there would be some groups in this country that would strongly object to it.

MR. AGRONSKY: Mr. Jones, we have often heard the wisecrack: What would happen if they gave a war and nobody came? That might be a precedent that people might like to adopt all over the world.

MR. PHELPS JONES: Yes, there is a universal movement for that.

MR. AGRONSKY: An unjust war -- I suppose that is a policy issue sort of observation. This is a very real and pragmatic and dangerous world. I understand your concern. I am tempted to try to address it myself, but I am moderator, and I will call on Mr. Sax.

MR. SAX: I don't know whether I can speak for you or anyone else, but I would like to make two comments on the things that were just said.

First, as to the question of due process. It seems to me that we ought at least to have our legal facts straight. The notion that it would be a violation of due process to grant a mass amnesty without considering individual cases really is a distortion of the idea of due process.

Maybe I can explain it best by referring to an experience I had in representing a defendant in a criminal case shortly after I got out of law school. We asked for a brief delay in going to trial so that we could get an expert to testify on one of the questions involved in the case. And the judge denied our motion, saying, "Your client is entitled under the Constitution to a speedy trial, and if I gave you a delay, that would be a violation of your client's constitutional rights."

Well, I was sure there was something wrong about that, and I finally figured out what it was. And it's the



same thing that is wrong with the notion that there would be a problem of due process in granting amnesty. That is to say that to make someone guilty of a criminal act and punish him, we, of course, require a careful look at the specifics of the case, but, of course, there is nothing in the Constitution suggesting that you can't let somebody off without having the elements of due process.

Let me just say one other word, and that has to do with the issue of deterrence. An awful lot has been said about deterrence in the amnesty question. I think at least this can be said in response to it.

It is the universal opinion of all experts on the criminal law that deterrence works best when it is swift and when it is sure. That is to say that sanctions ought to be imposed quickly after the wrongful act, and that the nature of the punishment ought to be clear and certain. The second great principle of deterrence is that deterrence works best for conduct that is rationally calculated and works less well when the conduct is the product of passionate or deeply held feelings.

To the extent that we know anything about deterrence, those are notions that I think are essentially universally held. And this much can be said about the amnesty problem. That is, as we face the problem now, in 1976, each of those elements is at its weakest. That is, we are at the very extreme end of the nondeterrence side of things.

Of course the punishment, if any, comes very long after the act -- years and years after the act; the punishment, if any, is uncertain -- and we have heard things this morning indicating how uncertain and, indeed, at times almost capricious the punishment is.

And, of course, whatever you want to say about people who are caught up in the Selective Service System -- that is, whether you believe you are dealing largely with people who acted out of deeply held personal, moral commitments, or whether you believe you are dealing with people who acted out of deeply held feelings of cowardice and fear -- the one thing that is clear is that you are dealing with people who acted out of emotions quite different from the kind of feeling that motivates people who cheat on their income tax.

So I think that there is very little reason to believe that whatever is done about amnesty today is likely to have much impact on deterrence.

Only one other thing ought to be added to that: I think the one thing our history does demonstrate about the amnesty issue is that the Presidents and the country have dealt differently with amnesty after each of the major wars. There never has been, either in the United States or anywhere else that I know of, a uniform practice. And that is quite understandable, because the country responds in a very different way to the inevitably different kinds of situations that a war brings.



Although people like me, proponents of amnesty, have often pointed to the Civil War, for example, the fact is that the Civil War was really quite a different kind of situation. There was a strong political necessity to bring the North and the South back together. In that sense it is different. The Whisky Rebellion was different too, and of course the Second World War was different, and every war is going to be different.

There is no possibility that whatever the Congress or the President does as a result of the Vietnam war is going to set a precedent to which we believe we would be bound after any other future war.

So it seems to me, for all of these reasons, that whatever you want to think about amnesty, you ought not to think that deterrence has any significant relation to whatever action the Congress and the President are going to take.

MR. AGRONSKY: Monsignor Rice, I should like you to respond to the whole issue of conscience, but first I want to call on Joseph Papp, who is the producer and director of the New York Shakespeare Festival, and producer and director of the New York Public Theater. He is eager to place the problem in a wider perspective.

MR. PAPP: "Conscience does make cowards of us all." I always feel rather ineffectual coming to Washington. For some reason or other I feel that unless I am arrested we will not be very effective in what we are doing here. How-



ever, I don't really believe that is so today.

Speaking in a very overall way about this particular gathering of people and these very interesting comments and statistics and points of view, I feel that it is a very helpful innovation that the issue of amnesty, which has been more or less dormant in terms of the general public as well as the Congress itself, is being brought up in a sort of consciousness-raising session. I hate to use that belabored phrase, but this is a very important first step in creating interest in the problem.

There is no question in my mind that the American people, for the most part, are more concerned with other things at this time. And I am sure they would like to get the whole thought of the war way, way, way in the back. Unemployment is raising its head, and the whole question of surviving economically is such an overwhelming concern now that people are not likely to consider amnesty an immediate issue. And politicians, as we have seen, are even less likely to bring this issue, which they consider unpopular, into the current election campaign.

So I have the feeling that the responsibility begins right here in this room, this day. The moving individual stories we have heard create awareness and tell various people various things. Certain politicians who might not necessarily agree with unconditional and total amnesty can't help observing that injustices are being perpetrated and continued seemingly for no real reason.



There is a philosophical question here.

Mr. Jenkins talked about the total picture at the time all this went into effect. In a sense we are reaping the consequences of a very immoral time, an immoral act and an unjust war in which many men died. That is part of the pity, that many good men died in this war. I think you are right to say, Mr. Jones, that we should concern ourselves with all the men who participated in this war who were wounded, who died, who have come home shattered in mind and body, and with those who are unemployed. I think the issue of amnesty touches on all these people because they were victims of the entire situation.

And when we talk about due process I have to smile a little bit, because I do know this war was conducted without due process. It was an undeclared war, and the various kinds of barbarism that this war engendered has very little to do with the constitutional notion or sense of legal justice and due process.

As Izzie Stone pointed out, we have sat down with enemies who have shot at us, killed our people, bombed our allies' cities. We sat down and made deals with them after the war, and these were enemies.

None of the people we're talking about today shot at us. These people have for the most part stood up and presented their viewpoints and resisted joining a very unpopular war. Among these people I am sure there are people who were AWOL and people who have committed some less significant act,

something smaller than standing up with your conscience. There may have been many acts not as magnificent, not as great, but these acts, particularly by people in the black and Puerto Rican sectors, are still manifestations of that entire picture.

As Mr. Jenkins said, I think we should look at the whole story. I don't think the people in this room here, despite the fact of opposition, are enemies. I think we all have the obligation to announce this banner of forgiveness, to make it clear to the American people through the grassroots, because we have to help the politicians.

Mr. Goodell, who sat here this morning, is not the number-one enemy by any means, and he alone cannot change anything. It has to be changed on a much larger scale. But as we've said, amnesty is not a consensus issue. It requires certain advocacy by key people. Certain politicians must step forward and advocate it as in the national interest, which it certainly is. It is no longer a narrow issue. It does reflect the entire war. It affects all the veterans, all the men who fought and died in this war. By taking these actions I think we can have a feeling movement.

MR. STONE: A point of order in defense of Shakespeare, and with all due deference to a great Shakespearean, Mr. Papp, it seems to me that quotation is wrong. He didn't say "Conscience doth make cowards of us all." I think it is, "Imagination doth make cowards of us all."



MR. PAPP: I'm afraid you're wrong, Izzie. The line goes:

"Thus conscience does make cowards of us all;  
And thus the native hue of resolution  
Is sicklied o'er with the pale cast of thought,  
And enterprises of great pitch and moment  
With this regard their currents turn awry,  
And lose the name of action."

MR. AGRONSKY: Izzie, I think Shakespeare had the last word.

I would like to ask Monsignor Rice to give us his feeling about the whole issue of conscience that is involved in the problem of amnesty.

MONSIGNOR RICE: We have to make certain distinctions, and I think we are helped if we make the distinction between the legal and the moral. The state may proceed legally, and those who resist the state may perhaps be technically in legal violation, and yet they are taking a very moral action.

The Vietnam war was a perfect illustration of good people standing against the might of the state. The issues really were clear, but the young men who were against the war were being oppressed by sophistry. They were being told that their protest would not be of any value. They were being told that they were unpatriotic. They were being told they would be responsible for the deaths of other people. The responsibility for the deaths of those who died -- and regrettably they died in a cause that wasn't worth the death of one of them -- the moral responsibility

for that rests on the leaders of the country, both on those who gave the orders and on those who would not open their mouths.

The Vietnam war was doubly evil because the authority for it was being wielded by people who knew better and were not only doing damage to a foe that wasn't a foe but doing damage to the country itself.

Amnesty is not a particularly Christian or Judeo-Christian idea, although the Jews have something like it in the Old Testament. Amnesty is an idea, the idea being forgetting: we don't argue about it; we wipe it out. But what we are doing in this country is not forgetting. We are not setting people free from the oppression of an evil that they should not be bearing. People are forgetting that they are suffering, the brave, sincere lads. And the broken, weak lads who were destroyed by the war, we are forgetting them too, just as we are willing to forget the veterans who are in pain and suffering from the war.

It disturbs me very much when conscience is brought up in the wrong way, as if to say that some of the very evil people who did terrible things were merely following their conscience. You can justify anything that way. But the human being is endowed with reason, and the bulk of humanity has a conscience on right and wrong. There are normal consciences and crazy consciences: we can't judge things by the crazy conscience.



These young men who stood against the war and those who support them were in the finest religious tradition. They were in the finest intellectual tradition.

I saw an article in the National Observer, and I expect to see more articles like that, putting down brave, good young people who stood against the war, as if somehow they were responsible for deaths that were caused by the cheering sections of the veterans' organizations as well as by the leaders.

I met these resisters. I received their draft cards in public and I was called by the FBI. I met many of them, hundreds of them. They were sincere, beautiful young people, and we should remember those of them who are suffering and forget whatever sin they are accused of.

MR. AGRONSKY: Colonel Edison Miller was a Marine career officer in combat in Vietnam. From his personal experience commanding troops at the front, he can describe the racial and economic stratification of those Americans who served in this war. His observations can illuminate the kind of constituency that we are concerned with today.

MR. CONDON: Mr. Agronsky, I just thought to add to the introduction that Colonel Miller spent five years as a POW in North Vietnam, the highest ranking Marine Corps prisoner of war.

COLONEL MILLER: Amnesty is a controversial issue in this country. It is basically an emotional issue. There are very

few logical arguments against amnesty, and I will be happy to discuss those in detail with anybody at any time.

I have debated the VFW and the American Legion, and I do not find the opposition to amnesty that some people would like to have you believe is there. On talk shows, generally one out of twenty will be opposed to amnesty. Most of the phone calls coming in will be in favor of amnesty.

We have a situation in this country in which the President calls for reconciliation and gives us clemency. It did nothing but raise a bush for a lot of people to hide behind. We must hope the bush will burst into flames and help people see the light.

But as Professor Sax said earlier, there are really only two solutions to this problem -- nothing or amnesty. Either live with the situation we've got or make little stopgap attempts to solve the problem, which will never work.

All the Clemency Program did was alienate everybody on all sides of the issue. As you have heard, it provided precious little to anybody.

The only way we are going to resolve this and have reconciliation in this country is by universal unconditional amnesty. Amnesty is not forgiveness of those who refused to serve. Amnesty, as you all should be aware, is a method of getting it behind us, forgetting about it.



It applies equally to President Nixon, who obtained his pardon, as Mr. Stone pointed out, perhaps not quite legitimately. It applies to Lieutenant Calley. It applies to me, who dropped bombs and killed Vietnamese people in a war we should not have been involved in. It applies to all of us, those who got us into the war, those who participated, and those who refused to participate.

Amnesty means let's get it behind us and let's get on with the business of making this country a little better. Let's get on with reconciliation and getting along with each other. Many of the people I have met who deserted, refused to serve, are probably some of our best young American men, because they had the courage to stand up and say, "Hell, no, I won't go." Muhammad Ali said it. Look where he is today. The same news commentators that condemned him five, ten years ago are now calling him, in his own words, "the champ." He is the champ. We have forgiven him. We have forgiven a lot of people.

I think we need young men who have the courage to stand up and express their convictions back in this country helping us now. I am not going to speak disrespectfully of those who went to Vietnam, not wanting to go but not having the courage to speak up, but I feel much more empathy with those who expressed their views. I have more respect for those who can stand up and take society's sticks and stones, even if I do not agree with them, than for somebody who just drifts with the tide and goes where he is showed.



You have heard the major arguments against amnesty. First, what about those who served? Well, I served, and if I take any pride or honor in my service, it is not subtracted or added to one bit by anybody else's service or lack of service. If I have pride and honor in my service, it is there in me. People who did not serve cannot detract from it, and people who served more than I did cannot detract or add to it. I just don't see that argument at all.

The argument that we won't be able to raise armies in future wars Mr. Stone covered very amply. I feel the same way. I have more faith in the American people than those who feel that a granting of amnesty would preclude us from raising an army in a time of national defense. I don't see it. Americans will rise when their defense is truly needed.

As for those who didn't serve, somebody else had to serve in their place. You have already heard the statistics: 10 percent of the eligible young men actually served in Vietnam; 89 or 90 percent did not serve for various reasons that you have heard Mr. Jenkins and others point out. We all know these inequities occurred in our draft system all through the years.

I have two brothers-in-law. One served in World War II; one didn't. They refused to speak to each other for years. I thought it was absolutely ridiculous. One went out of his way to avoid service in World War II; one didn't. I respect neither one more nor less than the other for his



views. They both had their reasons.

I think that those who served by saying, "I refuse to go to Vietnam," really rendered a great service to their country, because if the dissension in our country had not risen to the point where all of us were involved, we would still be in Vietnam. I would still be sitting in Hanoi.

Just recently President Ford got around to canceling a military order that had interned Japanese in World War II, an order which all of us have since greatly regretted. After thirty-four years he got around to recognizing, "Let's drop that from the rolls."

Is it going to take that long for us to get around to recognizing that we were wrong in Vietnam? A major controversy on that still exists, and the only way we are going to overcome it is to drop it.

The personal feelings will linger on for a few years, but it is about time we recognized that the legal reprisals should stop. Let's hope it doesn't take thirty-four years. It didn't take Andrew Johnson that long to recognize it. He gave a conditional amnesty immediately following the end of the Civil War, and three years later he recognized that it was worthless and gave a total unconditional amnesty.

I think it's high time we had a President of the United States who is a big enough man to make this type of judgment and decision.

DR. HARGER: I am Dick Harger. While I was in Vietnam as

an air intelligence officer, I served in three capacities. I flew combat missions in the war. I wrote intelligence articles for the Commander in Chief of the Seventh Air Force, and those were disseminated through various echelons. And finally, I briefed the Commander in Chief and senior staff.

After my Vietnam duty I was assigned to Headquarters, United States Air Force in Europe, as the key intelligence editor, analyst, and briefer, again for the intelligence staff, and also for the Commander in Chief. During that time, I briefed four-star generals on a regular basis.

The one thing I don't think has been brought out in this conference is the issue of secrecy, which I feel is vitally important. To try to give you some indication of the magnitude of this issue, let me just simply say that at one time in my intelligence career I declined an additional security clearance which was above the top-secret level. If I had taken that clearance, I would have had to take a top-secret oath.

I don't know if you can begin to understand the implications of this, but now with the exposures of the CIA, the FBI, and so forth, I think this issue is finally beginning to sink in. What were some of the implications of this for what we were doing in Vietnam?

For example, we conducted a bombing campaign in Laos, in violation of the Geneva Accords, which we kept secret from the American people for over six years.



People in Europe knew about it, but you weren't informed of this until 1970.

And let us look for just a moment at the Tonkin Resolution. You may recall that in August 1964 two American destroyers, the Maddox and the C. Turner Joy, were allegedly attacked by North Vietnamese torpedo boats.

If you will take time to read the Senate Foreign Relations Committee's hearings on this issue, there is only one conclusion you can reach about the Tonkin Resolution, and that is that it was based on information which was apparently fabricated. If the information was not fabricated, there was certainly not enough to warrant the Resolution.

As for the issues of secrecy, first of all, we haven't begun to understand the weapons systems that were used in that war. We have heard a lot about napalm; we have heard a lot about cluster bomb units; but I am talking about weapons systems whose effects were enormously more devastating. One of my briefing duties was to keep the Commander in Chief of the United States Air Force in Europe informed of the weapons systems and their effectiveness in the Indochina war, and what the applications would be in the European system in the event that we ever used those same systems in that theater of operations. These can fairly be called genocidal weapons. They caused civilian casualties in South Vietnam alone that exceeded the combined losses of American and South Vietnamese troops.

I still believe very, very strongly that if the American people began to comprehend the implications of the weapons systems they were using in that war, some of them might want to start in the Pentagon to get the full facts. As a former intelligence officer, I do not feel that I can release this information. I think we have done the wrong thing many times in such cases as the Pentagon papers, because it is driving our agents and intelligence networks in the United States even further underground.

Just two final observations about how this intelligence affected me at a personal level and the implications it has at the international level, and why I think the men who resisted during the Vietnam era have shown great moral courage.

When I was discharged from active duty in 1969 because I realized I could no longer pursue my career as a regular Air Force officer because I could not support what we were doing in Vietnam, I left my wife and children in my home in Arkansas and toured the United States for interviews for teaching positions. It was a long and exhausting trip.

When I got back my wife told me one night, "Dad" -- that's my father-in-law -- "thinks you are still in the employment of the intelligence community."

When I heard this, I was very, very much shaken. But I finally reflected on what my father-in-law had said, and realized he simply comprehended a contemporary American tragedy we don't seem to be willing to come to grips with:



In our mastery of secrecy and deceit, we have become an estranged people. We no longer trust some of those who are closest to us.

Now at the international level, what has this done? Very few if any of you have ever heard of such a thing as a Strategic Integrated Operations Plan. This is an unclassified title of what, during my tenure in the military, was a highly classified document. It was a document which literally targeted the world for annihilation.

From a professional point of view as a behavioral scientist, what I think we have done, in the case of Vietnam, which portends disaster for the human community if we don't get aggression under control, is this: We have rewarded people like me. I got all kinds of tax breaks while I was in Vietnam. I got extra pay. I got all kinds of privileges that, of course, these young men sitting here at this desk are denied. They are exiled. I was rewarded for engaging in, for being actively an instrument of, a policy of oppression and indiscriminate destruction in Vietnam. I have GI benefits. I have used them. I have been rewarded for my part in the atrocity.

I think it is a very, very tragic situation we face in the United States today when we find that those who have been altruistic have had this country literally turn its back on them. And that is why I support unequivocally unconditional and universal amnesty.

MR. GROSSMAN: I'm Steve Grossman, from Toronto, Canada, Exile War Resisters Organization. The question of amnesty is not a question of mercy for war resisters. It is not in its greatest dimensions a question of relieving the very serious legal and social liabilities of acts of war resistance, as serious a problem as that is, and in the enormous numbers that that problem encompasses. The question of amnesty in its greatest dimension is the question of resistance to an unjust, aggressive American war that violated countless legally binding international agreements between the United States and the peoples of this world.

What Dr. Harger is talking about is the criminality of the war, and that is what has motivated us, and continues to motivate us, to demand not mercy, not merely relieving our hardship, but true justice and the affirmation of the right of the people of this country to resist any such wars at any time they are made, no matter how they are cloaked in secrecy. It is our duty to ferret out the truth and to respond as honorable people to that truth as we are able to perceive it.

MR. AGRONSKY: Admiral LaRoche, you asked to make some observations.

ADMIRAL LaROCHE: I am pleased to follow Colonel Harger because I think he put it in a proper perspective. But I would like to address specifically the aspect of all the men who came to oppose the Vietnam war after they had joined



the military service. They are probably the most difficult ones to deal with. And that is where we get into the problem of the difference in the numbers, whether we are talking about 50,000 or 100,000, or whatever it is.

Somehow in the discussion this morning on numbers, it seemed to make a difference whether it was 50,000 or 200,000 or a million. I submit that it doesn't make any difference at all whether it is 50,000 or 100,000. We are concerned, if our system of equity and justice means anything, with any individual who has been unfairly treated. And for those who say we will do it legally, I would submit that it is not going to be done, and that's why we are meeting here today.

Specifically, Mr. Brown made the point that some 350,000 men have less-than-honorable discharges. Actually, we have about half a million men who have less-than-honorable discharges in the United States today. The point I would like you to remember is that these are almost entirely enlisted men. These are not officers. The reason they are not officers is that officers could quit any time they wanted to. Any time an officer desires to stop serving, he simply resigns and gets out of it. So if that isn't a class distinction which became very evident in the Vietnam war, I don't know what is.

Now, Dr. Levy, of course, was one of the classic exceptions in that he was determined to make his point while he was there. But it is totally true in the military



that any time an officer wants to get out, he may do so. He may have to stay for six months or a year, but he is always permitted to resign in order to escape trial by court-martial.

I was serving on active duty then, and I saw the pressures rise. Young men were very disappointed in their government, disenchanted with what they knew about Vietnam, and they decided to oppose the war. Some of the men went to smoking pot. Some went to coming back to the ship late. Some of the manifestations were punching somebody in the nose.

Well, we took the easy way out in the military service and kicked the bums out at a much higher rate than we had ever kicked the bums out before. It was a very simple way, because we had a conscript army and we could get all the people we wanted, so if anybody didn't meet our idea or criteria of what he should be doing, out he went very quickly.

These young men we have kicked out hate the government, hate the services, and this is an unhealthy cancer in our society which we could easily rectify. I am horrified when I hear the government man from the Justice Department say there is nothing the government can do, and we have to rely on President Nixon's appointee to provide a remedy.

I always thought somehow, from back in my early days of studying the Constitution -- and not being a lawyer I am limited -- that the ultimate power rested with the people. And that gets us back to Monsignor Rice. Somehow



we have to get a feeling of outrage from the people in this country about what has transpired, so we can generate some enthusiasm to bring about a complete and total amnesty.

How do you do that? Specifically, how do you deal with these guys who've got BCD's? That's not so difficult either. We in the Navy, Army, Air Force and Marine Corps ought to have one type of discharge. Because you see, when a man makes a mistake in the Navy, comes back late, we can do anything with that man. We can send him to prison; we can fine him. We can't use a cat-o'-nine-tails any more, not for the last hundred years, but we can send these men to prison literally for life. In wartime we can shoot them.

When we finish with a man's service, we ought to turn him back to society clean and whole, not stigmatized in any way. Unfortunately, we can stigmatize him, and that is an old-fashioned idea. We have made changes in our service, and I think that is one of the first things we ought to do, to have one type of discharge -- it's easy to translate that -- and give everyone who already has a less-than-honorable discharge the same honorable discharge, or whatever you want to call it.

We have had a lot of discussion on the legal and moral aspects today. When you get right down to it, it seems simple to me. It's amnesty, either yes or no.

MR. PHELPS JONES: I have a point. I spent thirty years in the Army, and I think I know what I'm talking about. An officer can submit a resignation any time he cares to, but

that resignation is accepted at the convenience of the government. There are such things as obligatory tours. Coming out of ROTC -- you will remember that antique institution which disappeared some years back -- we were obliged to serve for two years. Coming out of the military, we spent four or five years.

So yes, an officer can submit a resignation, but it doesn't mean he is on his way out the next day, and surely not during wartime.

ADMIRAL LaROCQUE: An officer who does not want to be an officer is no good to the military service, so we very quickly get rid of him or put him in some noncombat position where he is very comfortable, which is not exactly the same thing as sending him to Vietnam. In other words, we wouldn't send a man to Vietnam who didn't want to be an officer.

MR. AGRONSKY: I would like to move to another aspect of this amnesty problem that has been touched on by everyone who feels deeply about this. We talk always of those who gave up their lives, and we have with us Mrs. Pat Simon, the mother of one young American who did, indeed, give up his life in Vietnam.

MRS. SIMON: Before I speak from my personal experience, I feel I must respond to something that Mr. Jones said. He said there was no historical precedent for the kind of amnesty we are asking. That may or may not be true, but I feel there is no historical precedent for the kind of behavior



we exhibited in Vietnam. He also referred, with some horror, to a customer choice of war. I would like to propose that we'd better be able to choose the kinds of wars we are going to die for and kill for, especially with the weaponry stockpiled around the world.

One of the strongest arguments, of course, against the granting of an amnesty is that it would be unfair to those who were killed in Vietnam and to their families. When former President Nixon came on TV several times a year during his presidency and said that we would make a mockery of the sacrifices of those who died in Vietnam, I felt very offended and insulted because I didn't think, in the first place, he should presume to speak for us. Also, I knew that he did not speak for a number of parents who lost sons in Vietnam.

In talking with other parents, I realized that we had the responsibility of trying to counteract that kind of hostile climate, especially when it was encouraged by the Administration, which had such power and influence with the media.

Some twenty-eight parents who lost sons in Vietnam and I founded an organization called Gold Star Parents for Amnesty a little over two years ago in a Unitarian church in New York. The purpose of the project was to gather support for amnesty where we could from other people who had lost sons in Vietnam.

We were very much encouraged to learn, as we got in touch with parents state by state -- in the first place we got a 15 percent response, which is high for any kind of mailing -- that a third of the people who responded were in favor of amnesty. It varies widely state by state, but overall approximately 30 percent who had lost sons who were in touch with us were in favor of amnesty.

We also found with Gold Star parents, as with the population in general, that when people are given information about the issue -- about the people and the suffering and hardships involved, about the meaning of amnesty -- they are far less threatened by the idea, and in fact are quite open to it. It is a reasonable kind of solution that people can see after they are presented with the facts, rather than a vindictive kind of attitude. But of course we have had a great deal to counteract.

We feel that we should praise the people who resisted the war. We feel that we should ask their forgiveness for forcing them to make cruel choices that the rest of us didn't have to make. Their lives and their principles were on the line. They had to make a choice about Vietnam, and it seems absurd to me that the population is encouraged to be mad at those people.

We maintain that if you must be mad at someone, you should be mad at the government that got us involved in the war and kept us there for years and years and years.



CONSTITUTIONAL ASPECTS OF AMNESTY





MR. SMITH: Mr. Agronsky, I would like to make a point, perhaps to be the devil's advocate as much as anything else. I don't expect a great deal of concurrence.

Those who think that because the Vietnam war was wrong, the majority of the American people are now going to change over and honor those who were smarter than the majority, which didn't know it was wrong, are, I think, barking up the wrong tree.

The amnesty that we are talking about has, as I see it, nothing to do with justice. Amnesty is a pragmatic issue. Justice is the right of all people. If a person was not guilty of something, he is not entitled to amnesty; he is entitled to be acquitted. If he is guilty of something, he is entitled to have that determined, too.

We have to look at what amnesty was put into the Constitution for. It wasn't put in as part of our justice system, to see that each individual gets fair and equal treatment and due process. Instead, it was put in there so that our country, as an entity, would have a satisfactory means -- when a cancer was growing and you wanted to eradicate it and get on with other things, you would have a device that would allow you to do it.

Amnesty is not for the few. Amnesty is for the many. If it is to help us in this country, it is because as a corporate body we need it to eradicate something that is





bad and distasteful and should best be forgotten. It is not to take care of injustices to some fine young people, and also take care of justice to some very bad young people. That is not what the real purpose of amnesty is. It is to help our country get past something and to get on with it.

I think what we want to realize -- and you can feel very strongly if you want to that since the war was wrong, people who had the foresight and intelligence and courage to resist it should now be honored -- is that as a practical, pragmatic matter, the American people will never honor them as such.

But we hope for the good of our country that what we can do is learn lessons from the war, and get an amnesty as a constitutional right. We have to get a blanket amnesty. And although we haven't ever done it before, we had never impeached a President before, either, but we would have if he had stayed three or four more days.

These are the things that the Constitution is for. We need it and we ought to be practical about it instead of, I think, trying to achieve a consensus that we will never achieve.

I am suggesting that it doesn't matter who was right about the Vietnam war. For those who believe, as Mr. Jones does, that the majority were right, that is one thing. We don't have to decide that. For those who believe to the contrary, we don't have to decide that either. But we can see that we have a continuing, never ending, unyielding

dialogue that divides our people and keeps us from attacking the problems that were revealed by that war. We ought to get this behind us and get on with it as a practical, pragmatic issue.

MONSIGNOR RICE: To add something else practical and pragmatic, that's all very fine, but we are now in the process of forgetting all about these people. We are healing our wounds and forgetting that there are people suffering in a country that seems to be doing fine without them. That is why you can never let either the emotional or the moral issue die totally. Pragmatism won't do it. It will help but it won't do it.

MR. AGRONSKY: I don't think Mr. Smith advocates letting those issues die totally, but he does not in any sense regard amnesty as only a matter of conscience. He merely says that the constitutional process provides the remedy and we should address ourselves to the constitutional process.

I would like to ask Mr. Vayda of the Justice Department if anything said here today has given you any ideas about changing the Justice Department approach. Do you think the Justice Department approach in this area is justified and need not be changed? How does what has been said here affect your attitude toward this problem?

MR. VAYDA: As you probably know, the Department of Justice has been on record on two occasions. The first time was in 1972, when Deputy Assistant Attorney General Leon Ulman



testified before the House committee examining the possibilities of amnesty, and stated that the question of amnesty is one that belongs to the President and the President alone.

On the second occasion, I believe last year, Mr. Maroney, who is the Deputy Assistant Attorney General of the Criminal Division, took a similar position, and that is the position of the Department of Justice.

As far as amnesty or clemency is concerned, this is a matter which we believe is reposed in the President and is for him alone to determine. That is the Department's view.

MR. AGRONSKY: You can't carry it beyond that?

MR. VAYDA: No, that is the Department's view.

MR. STONE: I would like to ask the Justice Department man a question. In the Civil War, the famous Lincoln amnesty was based upon statutory authority designed as a measure to encourage disaffection in the southern rebel forces and bring people over. That is an example of a congressional statute's providing the basis for the presidential executive orders for amnesty. How do you explain that position?

MR. VAYDA: As I recall, during that particular period President Lincoln stated he needed no assistance from Congress on the question of pardons, and he disregarded the

congressional enactment. I think that is fairly clear in that particular period of time. He acted solely on his own from the right reposed in him in the Constitution, a right which was recently announced again by the Supreme Court in the case of Schick v. Reed, which I believe is a '73 decision of the Supreme Court, that the Constitution expressly empowers the President and the President alone to grant pardons or amnesty.

MR. STONE: You wouldn't deny the power of the Congress by resolution to advise the President of its will?

MR. VAYDA: I would suggest if the Congress chooses to resolve or make a resolution as far as amnesty is concerned, if the resolution does not have the binding effect of law, it would be perfectly proper. But the President, as you know, is expressly empowered to grant pardons.

MR. STONE: Wouldn't you agree that a resolution of that character would make it easier for the President to act if he wished to and harder for him not to act if he didn't want to?

MR. VAYDA: That is a decision for the President to make.

MR. SCHWARTZCHILD: The Supreme Court on a number of occasions in the last century expressly said that Article 2, Section 2, of the Constitution gives the President power to grant reprieves and pardons for federal offenses except in



cases of impeachment, but did not take away from the Congress the power to enact amnesties legislatively. It said that explicitly in those very words.

The position of the Nixon Administration and its Justice Department and of the Ford Administration, to which Mr. Vayda refers, is, it seems to me, a mere extension of the progressive power hunger of the executive branch, which has endeavored to take away from the Congress as much power as possible.

Senator McGovern has spoken of Mr. Ford's action this morning in taking a legislative matter, namely the food stamp program, into his hands.

Similarly, the denial by the Justice Department -- by Mr. Ulman and Mr. Maroney -- of the declared power of the Congress to act in amnesty is, I think, part and parcel of that same game of power traveling down Pennsylvania Avenue to the White House. There is no question that the Congress believes it has that power, and there is no question that the Supreme Court believes that Congress has that power. And that, it seems to me, settles the issue very nicely.

MR. VAYDA: I don't think the Supreme Court has ever addressed the issue directly. I am sure you realize, Mr. Schwartzchild, that, in this particular context, there have been two cases -- Brown v. Walker, which is an 1896 case, and I believe the Laura case -- which discuss the issue of immunity. Both of them repose the authority of immunity in

the executive, and they said you exercise the power if you so desire.

Now I think the practical solution, as Senator McGovern did point out, is that any question of amnesty must ultimately be decided by the President. Professor Sax in one of his many articles on the same issue has pointed that out.

MR. SAX: I don't want to make a debate about this, but since something I wrote was referred to, let me at least quote what I wrote. What I said was that the better view seems to be that both the Congress and the President have amnesty authority. I never said the President alone had amnesty authority. And, of course, in order for Congress to act, the President, I assume, would have to sign the bill.

I think it is not fair to say before an audience like this that the Congress has no authority to enact amnesty legislation. The most you could say is that if the Congress enacted amnesty legislation, and the President vetoed it and the Congress overrode the veto, that would present a question on which the Court has never passed. Only in that narrow context, it seems to me, could the question be raised.

MR. VAYDA: Well, I agree with what he is saying, that the Court has not said that earlier. The Court has never addressed the issue of amnesty directly as far as Article 1, Clause 2, Section 10, is concerned. Any expression of power in the Constitution gives the power of amnesty or the power of



pardon, as opposed to amnesty, solely to the President. And I think you will agree with that.

MR. SAX: To pick up on the question Mr. Agronsky asked you, in light of your role as adviser to the President, what kind of advice do you think the Justice Department ought to give in light of the experience you have had following the Clemency Program?

MR. VAYDA: As you appreciate, I have not spoken to the President recently. But nonetheless the Office of Legal Counsel does speak to the President and does speak to him on this issue. And they have succinctly stated that the power to grant amnesty resides in the President, especially since he has already acted. There is another situation in which he has acted in this area. And any act on the part of the Congress to modify, to change, his actions would be unconstitutional because of the constitutional provision. And as you say, this audience is not really the forum for a discussion of this nature.

MR. AGRONSKY: Mr. Vayda, just one more question, and I will make it very specific indeed. Granted we don't expect you to leave here and run over to the White House and say, "Mr. President, I would like to bring to your attention some matters that have been raised here." But we do wonder if you feel that anything has been raised here that might induce you to urge the Attorney General, for whom you work, to reconsider any aspects of the Justice Department's position?

MR. VAYDA: As far as the Justice Department position is concerned, as you well know, we were dealing with approximately 6,500 individuals when the program was initiated. That was September 16, 1974. Subsequent to that or to the announcement of the Proclamation, as you know, we had entry from those outside the country, and we had a very significant review accomplished by all United States Attorneys, about 940 United States Attorneys and their assistants, throughout the United States.

As a result of this large review of cases, approximately 1,700 of the then pending 6,500 were dismissed as having no prosecutor of merit. When I speak of prosecutor of merit I am speaking of evidence -- not whether the assistant liked the case or didn't like the case or was against the Vietnam war or not against the Vietnam war.

That left us with a residue of approximately, I think, 4,500 cases. Of that number, I think approximately 725 or 730 individuals did come forth and did, in fact, enter the Clemency Program as administered by the Department.

I am only competent to speak of the Department's program. I have heard a lot of talk about amnesty and clemency today, but the only true amnesty is whereby the draft evader, his whole offense, everything is totally wiped away. The fellow who came in and fulfilled the period of alternate service given to him by the assistant or United States Attorney can go forth to a future life unencumbered by any possible stigma which might attach to some of those that are left.





MR. AGRONSKY: Mr. Vayda, it is almost as if you never heard the words of Mr. York, who demonstrated to you what he had to go through. I grant you that it was not under the aegis of the Justice Department. But he does address himself to the whole problem of that voluntary work by which he expiates his having resisted the authority of the government. I believe that his observations demonstrate -- and I imagine that they are common to most of you who have gone through the process -- the extreme difficulty of going through that particular kind of process and that machinery. It isn't as if just because it is set forth it happens.

Representatives of the government like yourself, who sit here as an observer for the Justice Department, might ask themselves if perhaps the conditions that are set forth are really not the right conditions and should be changed. Would you recommend that they should?

MR. VAYDA: I see no possible way, other than taking the legal steps we have taken, in which to wipe away this innate prejudice that prospective employers might have. Despite the fact that you come out of this whole thing with an honorable discharge, some day perhaps, in a new position, you will be asked, "What did you do during the war?" "I deserted."

There is nothing that government can do, other than perhaps bring an action, if it is one appropriate under the Civil Rights Act, to take that innate prejudice away from

that prospective employer or your prospective co-workers. No matter what we say, there is nothing that can be done to take that innate prejudice away.

MR. STONE: One of the previous witnesses said that he had yet to hear a logical argument against amnesty, and that is true. But I think that after more than fifty years as a reporter, I can tell you what you would hear privately, logically, at the State Department or the Pentagon against amnesty. It is very logical, but they don't dare say it in a country that still has a free society.

They would say that, unfortunately, the Vietnam war undermined our will; that it and its consequences have made it more and more difficult for those who know best -- generals, diplomats, State Department people -- to take rapid though often covert steps to support the national interests abroad. They would say we have billions of dollars of investments abroad. They can be protected only if we make clear that any interference with them can bring swift retaliation by our armed power. We are Number One in the world. And this is gravely endangered by the consequences of the war.

It is very hard to carry on covert CIA operations any more. The press is constantly exposing things. Congress has abused the executive power and passed the War Powers Act.

If on top of that we have an unconditional amnesty, then we are saying to the armed forces, aren't we, that if they want to get mixed up in an Angola that they feel tests

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our will, and the majority of the people feel the hell with that, we have had enough foreign adventure, and what is in it for this country anyway -- if they don't fight or if they desert or refuse to answer the draft call, there will eventually be amnesty anyway.

The real argument is an argument against two intertwined things. One is democratic control by public opinion of the war-making power and the increasing sophistication which the State Department and the Pentagon sense about their war propaganda and their excuses for trying to play nursemaid to the world and take care of our investments abroad.

And intertwined with that is something that Monsignor Rice touched on, that a fundamental part of the constitutional system is the great idea that comes down to us in part from two great Spanish Jesuit priests -- resistance is obedience to God.

One of the basic premises of the American system -- and this comes from John Locke -- is the idea of unalienable rights in a government of limited powers. It is not easy to define, it is full of risk, but at some point there is a right of resistance to the government if you feel the war is unjust or that it has been brought about contrary to the Constitution. You risk your neck by doing it, but you have a duty to do it; and that resistance, that rebellion, is part of a free society.

Jefferson said it very, very plainly, and it is implicit in the Constitution in the concept of unalienable rights. There comes a point where the ordinary citizen has a duty to resist, and that is involved in a resistance to war.

What the Pentagon and the State Department fear is that their power to engage in reckless adventures abroad -- reckless by my standard, not their standard -- has been seriously curtailed, and an amnesty would curtail it further.

Now that is a logical argument, but not one that they dare to make openly, and I think that is the real argument they use with the President and on the Hill.

MRS. RUKEYSER: Some things that have been said today show us what is underneath the facts that have been talked about, and what has happened to the imagination of the American people as a result of these issues being brought before us and the attempt to forget them, and what this has meant to us imaginatively. It is full-time work to put Vietnam aside or even talk about amnesty and the reasons why we don't have it -- full-time work. We all show in ourselves what is being done to us.

It seems to me that the resisters have acted out their beliefs. They are not writers; they are people who have said, "We perceive what is happening" -- and acted accordingly. They are not ahead of their time. You can't be



ahead of your time; you can only respond to what is happening.

And that is what the resisters have been doing. The government's slowness to notice has been a terrible deadness, but the government can be alive, the government can be responsive, the way the young men have been responsive. They are not pacifists. We older people are pacifists, some of us, but the young men have said, "There are wars I would fight in." They said, "I would fight against Hitler." Some have said, "I would have fought in Spain." But the government cannot tolerate these resisters.

There is a strength here. People here have said we will lose strength if we don't punish the resisters, but there are strengths and imaginative forces in resisters on which things can be built.

Many times today we have sounded as if we were in a period of mourning, and trying to find a way to act on the qualities that were in the resistance -- are in the resistance, in these men and the women who went with them, and babies who are now being born. I think of my first grandchild, who came from Canada to this country yesterday to live.

It is a question now of how we are going to use the strength that has been expressed in many, many ways today, whether we have avenues called amnesty in our cities, whether we have rivers called resistance; these are the sentimental ways in which it could be done. But to build on the qualities expressed today, and to draw strength from them, that is what I hope for.

MR. PHELPS JONES: One point. Izzie Stone raised in a rather breathless way what the State Department and Pentagon are really thinking. He should just read Dr. Kissinger's speech in San Francisco and before the Congress. He deeply deplores the loss of executive branch flexibility. He may be right or wrong, that is arguable, but it is not a dark plot.

MR. STONE: That is the basis of Kissinger's argument. What he means lies behind and is really visible if you read Kissinger's speeches; that is, to him flexibility means absolute power.

MR. AGRONSKY: We must give up this room of the Senate Judiciary Committee, so we must conclude this forum.

I think a lot of points were raised here that are worth examination. I feel that the members of the government, of the Administration, who sat through the session have certainly been given some food for thought and perhaps it will produce some results. I think every facet of feelings about amnesty has been set forth, or nearly every one. It has been a very wide-ranging spectrum of opinion.

I want to ask Senator Hart, who is the initial sponsor of this forum, if he would like to make some concluding remarks.

SENATOR HART: No concluding remarks except to thank all of you for the contributions that have been made.



I only wish that I could grab the Justice Department's explanation for the failure of Congress to have acted. It is not because we doubt our constitutional power. It is that we lack the guts to do it.

Then the final congressional alibi: in an issue so emotional and in a land so large, I think we kid ourselves if we anticipate that Congress will act unless the one voice common to all of us in the country, the President, urges us to act. And whatever his verdict, it will, I think, accord a very high place to those of you who have spent a whole day trying to move us, and I am grateful to everyone.

APPENDIXES







1. THE NUMBER OF THOSE STILL IN  
NEED OF AMNESTY

Figures Prepared by  
Reverend Barry Lynn  
of the United Church of Christ

The following figures represent the number of persons still in need of a universal, unconditional amnesty. The period covered is roughly January 1, 1961 to April 30, 1975.

A. Draft Resisters

- 4,400 - persons currently sought by the Justice Department for alleged violation of the Military Selective Service Act.
- 800,000 - persons who did not register for the draft and who are still liable for prosecution. Their names are largely unknown. This is based on an approximately 4 percent failure-to-register rate.
- 8,000 - American males who acquired Canadian citizenship during the Vietnam era and since. Most are theoretically excludable as undesirable aliens, even if it was never proven that they violated the draft laws. 8 U.S.C. 1182(a)(22) excludes persons who obtained foreign citizenship in order to "avoid or evade service or training in the Armed Forces" and the proof required by law to find such intent is very minimal.
- 11,178 - persons already convicted for violation of the Selective Service Acts. (Only a few of these persons are still in prison; many are still on probation.)
- 700 - unconvicted draft evaders now doing alternate service under the Presidential Clemency Program.



B. Military Resisters

- 8,000 - persons still classified as "deserters-at-large." (This includes 4,200 from the period August, 1964 to March, 1973.)
- 710,000 - veterans with less-than-fully-honorable discharges.

C. Civilian Resisters

- 1,000's - of civilians hold felony or federal misdemeanor records for nonviolent opposition to the war. They may have destroyed draft files, burned their draft card, failed to obtain proper permits for demonstrations, or violated other federal statutes prohibiting "interference" with military operations.

## 2. AMNESTY BILLS BEFORE THE NINETY-FOURTH CONGRESS

Summaries by the Library of Congress

S. 1145.\* Mr. Hart (Mich.): 3/11/75. Judiciary.  
Cosp: Abourezk, Brooke, Gravel, Hatfield,  
McGovern, Nelson.

National Reconciliation Act - Provides that any person who failed or refused to register under the Military prior to March 28, 1973, or failed to accept or refused induction into the Armed Forces between such dates, or who, while liable for military service, otherwise violated such Act or regulations promulgated under its authority between such dates, shall be granted immunity from prosecution and punishment under such Act for such evasion, failure to register, or other violation.

Provides that any member or former member of the Armed Forces who is alleged to have been absent in violation of the Uniform Code of Military Justice during the period August 4, 1964, to March 28, 1973, shall be granted immunity from prosecution and punishment under the Uniform Code of Military Justice for such absence.

Requires that 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 March 28, 1973, or for evading or refusing induction, or while subject to induction into military service under such Act for any other alleged violation of such Act shall be dismissed by the United States, and all records and information relating thereto shall be expunged from all Government agency files.

Provides that no person shall be denied any civil right or employment opportunity because of any crime for which such person was charged, convicted, or alleged to have committed and for which relief was granted under this Act.

Makes it a misdemeanor punishable by a \$5,000 fine or one-year imprisonment, or both, to deny any person employment or any civil right because of any crime for which such person was charged, convicted, or alleged to have committed and for which relief has been granted under this Act.

\* Amendments dealing with the question of less-than-honorable discharges are under consideration.



Authorizes the appropriation of such sums as are necessary to carry out this Act.

S. 1290. Mr. Nelson: 3/21/75. Government Operations.  
Cranston, Humphrey, Javits.

Clemency Board Reorganization Act - States that the Presidential Clemency Board shall be composed of nine members to be appointed by the President, one of whom shall be designated by the President to serve as Chairman.

Provides that all jurisdiction, responsibility, or function with respect to any draft evader or military deserter is transferred from the Department of Defense to the Presidential Clemency Board. Authorizes the Board to recommend alternate service of up to 2 years for draft evaders and military deserters.

Authorizes the reacquisition of United States citizenship by appearance before a United States district court judge, renunciation of citizenship acquired from another country, and pledging allegiance to the United States.

Provides that veterans benefits may be conferred in the discretion of the Veterans' Administration or Department of Defense after issuance of a clemency discharge under this Act.

H.R. 2230. Mr. McCloskey: 1/28/75. Judiciary.

Amnesty Act - Provides a program of total amnesty for deserters, draft evaders and those refusing to register for the draft. Applies the program to such offenses committed between August 4, 1964, and January 27, 1973. Allows for a restoration of citizenship for those who renounced citizenship as a result of U.S. involvement in Indochina. Directs that pending legal proceedings against such offenders be dismissed. Expresses the sense of Congress that the President grant pardons for persons convicted of such offenses.

H.R. 2568.\* Ms. Abzug: 2/3/75. Judiciary.  
Conyers, Edwards (Calif.), Harrington, Holtzman,  
Mitchell (Md.), Rosenthal, Waxman.

War Resisters Exoneration Act - Grants general amnesty, notwithstanding any other provision law, to any person for violation of specified laws including the following prohibited acts during the period between January 1, 1961, and November 22, 1974: draft evasion, draft evasion abetting, and draft card destruction;

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\* On 1/14/75 Congressman Ronald V. Dellums submitted a separate bill, H.R. 353, which is identical to H.R. 2568.

advising another to desert the Armed Forces; deserting from the Armed Forces; missing the movement of aircraft, or unit with which it is required in the course of duty to move; using contemptuous words against various executive and State officials where present as a commissioned officer in the Armed Forces; concealing or assisting any person who has deserted from the Armed Forces; and attempting to cause insubordination by any member of the military or naval forces of the United States, with the intent to interfere with the loyalty or discipline of the military or naval forces of the United States.

Makes the effect of such general amnesty to 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. Includes within this general amnesty the granting of an honorable discharge to any person who received less than honorable discharge because of such violations.

Establishes an Amnesty Commission composed of five members to grant general amnesty to individuals whose violation of the above laws was in substantial part motivated by the individual's opposition to, or protest against, the involvement of the United States in Indochina; and who was not personally responsible for any significant property damage or substantial personal injury to others in the course of his violation of such law.

Stipulates that at least two members of such Commission shall be female, and that at least two members shall be from racial minorities.

Gives the Commission jurisdiction to hear and determine applications from individuals entitled to automatic amnesty by this Act and aggrieved by the refusal of the military board to grant an honorable discharge to him. Makes provisions for applications for amnesty, and for judicial review of a decision by the Commission.

Provides that, upon petition to any U.S. district court, the United States citizenship of any former citizen solely or partly because of disapproval of the involvement of the United States in Indochina shall be fully and unconditionally restored.

Gives the district courts of the United States jurisdiction without regard to the amount in controversy to hear actions brought to redress the deprivation of rights that are restored by this act, and to grant such legal and equitable relief as may be appropriate.

Authorizes such appropriations as are necessary to carry out the provisions of this Act. Provides that if any provision or application of this Act is held invalid, the remainder of the Act shall not be affected thereby.



H.R. 6338. Mr. Obey: 4/23/75. Government Operations.

Clemency Board Reorganization Act - States that the Presidential Clemency Board shall be composed of nine members to be appointed by the President, one of whom shall be designated by the President to serve as Chairman.

Provides that all jurisdiction, responsibility, or function with respect to any draft evader or military deserter is transferred from the Department of Defense to the Presidential Clemency Board. Authorizes the Board to recommend alternate service of up to 2 years for draft evaders and military deserters.

Authorizes the reacquisition of United States citizenship by appearance before a United States district court judge, renunciation of citizenship acquired from another country, and pledging allegiance to the United States.

Provides that veterans benefits may be conferred in the discretion of the Veterans' Administration or Department of Defense after issuance of a clemency discharge under this Act.

H.R. 9596. Mr. Kastenmeier: 9/15/75. Judiciary.  
Badillo, Chisholm, Conyers, Drinan, Edwards (Calif.),  
Fraser, Leggett, Mikva, Mitchell (Md.), Moakley,  
Rees, Scheuer, Sieberling, Stark, Young (Ga.).

Vietnam Era Reconciliation Act - Provides immunity from prosecution and punishment to those persons who, because of disapproval of the military involvement of the United States in Indochina during the period covering August 4, 1964, and ending March 28, 1975, resisted the draft, were absent from the Armed Forces without leave, or disobeyed an order, which order if obeyed could reasonably have led to the death of another human being.

Directs that persons convicted of such offenses and who are serving, or have served, a prison sentence or other punishment shall be released from prison and from other punishment, and any remaining portion or terms of punishment shall be deemed to have been served. Provides that a person who is serving a sentence as a result of the above offenses and is also serving a sentence for an offense not covered by this Act shall be released only from that portion of his sentence specifically applied to offenses covered by this Act.

Provides that persons serving a term of reconciliation service, pursuant to Presidential Proclamation 8313, of September 16, 1974, may be released from such service and the remaining portion may be waived.

Directs that legal proceedings instituted as a result of offenses covered by this Act be dismissed. Requires all records and information relating thereto to be expunged from all Government department and agency files, records and correspondence.

Provides that any person who is eligible for relief under this Act shall be granted a certificate of resignation without condition from the Armed Forces.

States that no person shall be denied any statutory or constitutional right because of any crime for which relief is granted by this Act.

Exempts from that provision of the Immigration and Nationality Act which denies admission to the U.S. to any person who left the country to avoid military service or any citizen of the U.S. who makes a sworn statement to an appropriate official of the Immigration and Naturalization Service to the effect that he renounced citizenship because of disapproval of military involvement of the United States in Indochina.

Authorizes the appropriation of such sums as may be necessary to carry out the provisions of this Act.





3. AMNESTY BILL PROPOSED BY THE  
NATIONAL COUNCIL FOR UNIVERSAL AND  
UNCONDITIONAL AMNESTY

Summary by the NCUUA\*

1. Automatic amnesty shall be granted to:

all draft violators.

all violators of 31 specified Articles of the Uniform Code of Military Justice, involving violations which could be antiwar in motive and do not involve civilian crimes.

all violators of 8 specified sections of title 18, U.S. Code, involving violations affecting the national defense.

2. Amnesty for other violations of law: Any person convicted or charged with violating any Federal, military, state, or local law other than those specified as automatic can apply to a Commission for Amnesty. These persons shall present a statement that the violations for which they seek amnesty were a result of their resistance or opposition to the draft, the military, or the involvement of the U.S. in Indochina. If the government does not challenge this statement within 90 days, the person shall be granted amnesty. If the government does challenge it, the Commission shall decide whether or not the person receives amnesty. In order to deny amnesty the Commission must be able to clearly show that the violation was unrelated to antiwar activity. If the Commission does deny amnesty the person may appeal the decision to a U.S. district court.

3. Effect of amnesty: The amnesty granted shall

restore all rights lost, suspended, or otherwise limited.

grant immunity from further or future prosecution.

expunge all government records as far as possible.

vacate any conviction, declaring it null and void.

nullify all other legal consequences.

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\* The NCUUA bill is being circulated in the Congress for consideration.

4. Military discharges: All persons given an other than honorable discharge before the date of enactment of the bill are automatically granted an uncoded honorable discharge. All persons discharged from the armed forces after the date of the bill are to be given a single type discharge "certificate of service," without qualifying the service in any way and giving no indication for reason of discharge.
  
5. Citizenship: Persons who have lost or renounced U.S. citizenship shall have it unconditionally restored by stating to the Commission that they lost citizenship because of resistance or opposition to the draft, the military, or the involvement of the U.S. in Indochina. By a similar statement, persons who wish to retain foreign citizenship but wish to visit in the U.S. shall be exempted from the exclusion provisions of the immigration laws.



4. STATEMENT OF PROFESSOR JOSEPH SAX  
ON THE PROBLEM OF AMNESTY\*

Ann Arbor, Mich.  
May 6, 1974

Senator Philip Hart  
Senate Office Building  
Washington, D.C.

You have asked me to comment on three issues that arise whenever proposals for amnesty legislation relating to the Vietnam War are put forward: (1) the question of alternative service; (2) the proper scope and coverage of such legislation; and (3) the desirability of case-by-case evaluation, rather than general determination by legislation of the status of various persons. I shall take them up in that order.

1. Alternative Service

The arguments generally made for imposing, at this stage a requirement of alternative service, are three. It can have a deterrent effect for the future, setting a precedent that refusal to serve in, or desertion from, the armed forces, should not be lightly undertaken, and cannot be costless; second, it may have a punitive effect, making the point that service was a legal obligation that, even for good reasons, should not be given a status of acceptability; and third, that even conscientious objectors are required to do alternative service, and draft resisters and deserters should not be put in a better position than COs.

I do not find any of these claims persuasive. As to deterrence for the future, it is a virtually uniformly held position among experts on the criminal law that for deterrence to work it must be swift and sure; that is, the sanction must be imposed quickly and the nature of the sanction must be clear and certain to the person whose behavior is sought to be affected in future (and to others who may be so tempted). It is also undoubted that deterrence works best for conduct that is rationally calculating, and works least when the conduct is the product of passionate or deeply held feelings. Thus, the most deterrable

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\* Congressional Record, March 11, 1975.

conduct is, for example, income tax evasion, and the least deterrable is conduct like the murder of a spouse in the heat of anger.

Taking these three fundamental principles of deterrence, it is clear that the conduct with which amnesty legislation proposes to deal falls very far on the non-deterrable side. By their very nature, amnesties usually come considerably after the event, when involvement in the fighting has ended, and passions have cooled on all sides. In addition, government's response to claims for amnesty are inevitably tailored to the particular event involved and cannot be expected to be uniform from one war to another.

Our own history makes this later point quite clear. American experience with amnesty, from the time of George Washington, has varied widely depending on the moral and political goals sought to be achieved. An amnesty may be needed to bring political opponents back "into the fold," as was the case in the War Between the States. It may be desired to cope with laws that have been unmanageable, as with the Whiskey Rebellion; it may be undertaken during war-time, in a limited way, to deal with inability to recruit and hold soldiers, as happened in our early history. It may be wanted only to deal with retrospective efforts to untangle mistakes and blunders in the conscription process, as was the case with the Truman amnesty board.

And, of course, one must expect congressional attitudes toward amnesty to reflect feelings about the particular war in question. For example, it is not surprising that no general amnesty was declared following World War II, considering the overwhelmingly favorable attitudes in the nation to that war. Similarly, there is no reason to know whether, should the problem arise in the future, we would be dealing with a war like the Vietnam War, the Second World War or, the War Between the States, each of which might quite properly call for different attitudes toward those who opposed the war, and each of which present very different problems in the broad political aims and effects of an amnesty, depending, for example, on the degree to which the War has divided significant groups of citizens.

I can say from personal experience, having talked with a great many young men who were considering draft refusal, and with many who had refused or deserted (in Stockholm and Paris, in 1967), that the question of the "precedent law" of amnesty in the United States was never in any discernible degree a factor in their decisions. Nor, indeed, if it had been, could I (or anyone) have told them what the appropriate precedent was or would be. Should one have told them to read up on the Whiskey Rebellion, or on the War Between the States, or on the situation in France following the Algerian War?



One might say that if the United States set a precedent now, and determined to follow it, we would have a clear rule to which future potential draft refusers might look. But I think it fair to say that no such precedent could be binding, for no Congress can bind the future, nor would it want to in such a complex situation. To get a perspective on the problem, consider how a Congress sitting in 1840 could have set a precedent that it would have been willing unyieldingly to follow in 1868 or 1872.

Before leaving this matter, let me reemphasize that my own experience with draft resisters and deserters is unambiguous in indicating that the overwhelming numbers were people whose conduct was motivated by very deeply held feelings as to whom their legal situation was not a consideration. Indeed, I am certain that those persons who considered draft resistance, but who were conscious of their legal status (and there were a number of them who passed through my office), ultimately resolved the problem by going into the service. That is to say, without regard to amnesty, there were a number of people who weighed the legal problems of obtaining CO status, of possibly failing to obtain it, of having to undergo immediate prosecution, of the attitudes of family and friends, and all the immediate difficulties of getting entangled with the conscription laws. In short, the weeding out or deterrence process is governed by the immediate consequences, not by long term consideration of congressional attitudes. Those with very strong feelings, strong enough to be unaffected by the immediate situation, certainly were not affected by the prospect of how the nation would deal with them some years hence.

As a final word on this matter of strong feelings, and the irrelevance of amnesty laws to affect them, I want to emphasize that one need not sympathize with, or agree with, the nature of those feelings, to be certain that deterrence through the medium of amnesty laws will not be effective. Thus, whether one thinks that some draft resisters responded to deeply held moral feelings, or to simple but powerful cowardice, you can be certain that in either case a reasoned consideration of future congressional legislation would not moderate their feelings. If, indeed, as may be the case with some who oppose amnesty, they feel many draft resisters were merely afraid to die, that is the motion least likely to be affected by what the Congress does half a dozen years after the event.

Of course, one might take the most extreme position. Is it possible that refusal to enact an amnesty law, or to enact an amnesty with alternative service, might affect in the future the conduct of some people, however few? Is there anyone who might be affected? Doubtless the answer to the question put thus is yes. It is possible, but everything we know about deterrence

suggests that no significant number of people would be affected, and that to act on this hypothetical possibility is to push a problem of practical judgment to what has been called a "dryly logical extreme."

Let me now turn away from the deterrence question to the question of alternative service in general. If alternative service is not a useful idea for deterrence purposes, might it serve some other useful purpose? Here we come to a tempting misconception. Why should young men who did not serve at their country's call in Vietnam not be willing to give several years of their lives to their country's service in civilian and useful work?

This formula turns the proper question around. We are a nation that does not require each young person to be conscripted for a few years of their lives to serve the state in ordinary times. Indeed, we pride ourselves on the idea that this absence of general compulsion is an important part of our status as a free society of individuals, whose service in the community should be voluntary, if it is to be undertaken. There are other societies that pack up their doctors and engineers and send them off to serve the state wherever the state decides they are needed. But America has always taken the view that "the individual is not the mere creature of the state," and that public service should arise out of a sense of duty that is within the individual, not as a governmentally imposed legal obligation.

I feel very strongly that we should keep to this position, and I'm sure that the vast majority of members of Congress feel the same. It is in the context of this tradition that the requirement of alternative service should be viewed.

Since we do not generally conscript people to serve the state, such conscription should be justified by very special circumstances. We have conscripted, reluctantly, in time of war under the assumption that the very existence of the society was threatened. A requirement of alternative service today would not serve that purpose. Nor, based on what I have indicated above, is such a requirement likely to be effective in making conscription in a potential future war possible; that is, the deterrent argument will not hold.

On what basis, then, is imposed alternative service (so at odds with American traditions) justified? It is true that COs bear such a responsibility in time of military conscription, but that is based presumably on the same need to preserve the society in wartime as is military conscription (a need that does not now exist), and it may be justified as a means of imposing an immediate deterrent (the only kind that works) during a time when men are being conscripted to fight in a war. I myself would



not oppose the idea of alternative service being imposed during an ongoing war, and being done contemporaneously with it, for the reasons I stated above as to the immediacy of deterrent devices and the exceptional justification during wartime of departing from our usual traditions. But that should be the limit of the exception, lest we fall into the habit of treating all young people as "duty bound to serve the state," a most un-American view.

Finally, then, there is only the punitive argument. To impose alternative service now is to impose a penalty for refusal to serve or for desertion. As to this, I can only say that penal measures are the very opposite of everything that the concept of amnesty means. Amnesty is a forgetting, a putting aside of old claims of obligation in favor of reconciliation. If alternative service is imposed as a penalty, it will be understood as a penalty, and it will operate precisely in opposition to the fundamental purpose of an amnesty. So long as we are considering amnesty we must act in the spirit of amnesty, and not in the spirit of "penal servitude."

## 2. The Proper Scope and Coverage of Amnesty

Here the problem is twofold. The first is whether it makes sense to distinguish between draft resisters and deserters from the armed services. And second, how one is to deal with conduct carried on in the name of opposition to the war, but that was itself unwarranted (such as desertion under fire, or destruction of the lives and property of innocent people in the name of protest). Let me deal with each in turn.

From my experience, I am persuaded that the usual distinction between draft resistance and desertion is the product of a factual misunderstanding. Many people think of desertion as a more serious matter than refusal to undergo induction in the first instance.

My experience makes quite clear that generally the difference is only the product of experience and background of the people involved. Most draft resisters come out of the middle class, college student, urban groups, who were aware of the details of the Vietnam war protest prior to the time they were called to service, and were rather knowledgeable about the ins-and-outs of the draft system. They thus acted at a very early stage; they often knew how draft boards would feel with them, and they may have had easy access to another country or have had friends who fled to Canada or elsewhere.

Conversely, of the deserters I have interviewed, the great bulk were rural or from small towns, were less educated and knew very little about Vietnam when they entered the service. Indeed, they were in many instances volunteers. Their information, and reaction to the War, thus by the mere chance of their background, usually did not come until after they had been inducted. And thus they were only in a position to respond (if they were persuaded to respond negatively to the War) by deserting from the armed services.

Thus, in my opinion to make any general distinction between deserters and resisters would be to penalize those who, in general, came from more limited educational backgrounds, or who came from more rural areas of the country.

As to the general scope of amnesty legislation, I would urge that it seek to define amnesty generally, embracing both resisters and deserters. And I would urge that it embrace only service in the armed forces. I would impose only one exception, for which I would deny amnesty, and that is for desertion under fire. That is conduct at a point of imminency of danger to others at which it seems to me too late to undertake a decision not to serve (just as we impose some sort of "clear and present danger" test of imminency on free speech).

Moreover, I do not think the Congress should at this time try to define a general amnesty for all conduct that was carried on in the name of opposition to the War, even though that conduct may have been otherwise criminal. Some such conduct should not be excused even though it may have been carried out under a high sense of moral duty; other such conduct would seem excusable, but here the range of activity is too broad to be subject to a general legislative act by the Congress. I think the first and appropriate step is to grant an unconditional amnesty for all those who refused to be inducted into the armed services, or who deserted from the armed services, out of opposition to the Vietnam War. I would thus at this time limit the legislation to refusal to put ones-self to service in the armed forces.

### 3. Case by Case Evaluation

The practical problem raised here, even as to service in the armed forces, is that not all deserters and draft resisters acted out of principled opposition to the Vietnam War. At this point, the Congress is faced with a practical problem. To try to untangle the motives of many thousands of persons at this time is a monumental administrative task, and one as to which evidence is hard to develop.





The example of the Truman amnesty board is not likely to be very helpful. As you will see from the hearings of Senator Kennedy's Subcommittee of Feb-Mar., 1972, that board undertook a very limited task, dealing essentially only with cases of administrative mistakes, and with a quite modest number of cases.

We are faced here with the conflicts between a desire to do explicit justice to each particular individual, and the problem of creating an administrative monster that will sink in a mass of endless detail, trying to sort out facts that are simply unavailable.

I would suggest two possibilities. One is to draft a general amnesty with inclusive dates, covering all those who might have acted in relation to the War in Vietnam. This would, of course, sweep very broadly, but I would note in this regard that it is the sort of broad approach taken by the French following the war in Algeria (see my testimony before the Kennedy Subcommittee of March 1, 1972, p. 288). If this seems too broad, it might be possible to impose upon the Department of Defense the obligation, within a certain time period, to object to the amnesty for any certain individuals thus covered by a broad statute, putting upon them the obligation to produce evidence why an amnesty would be inappropriate. The legislation could require them to show that a given act of desertion or refusal to serve was not related in any way to principled objection to the War in Vietnam or involved specific wrongdoing that should not be excused. Doubtless, this would be a hard burden to carry, but if there are specific cases where the DOD is persuaded that an amnesty would be improper, and they have evidence to support that view, they might be permitted to bring that evidence forward.

Such an approach, I think, would vastly reduce the potential administrative burden of taking on every case at the outset, and yet would provide a means to deal with cases where a showing could be made that an amnesty would be inappropriate. To hear such cases, the legislation could set up a modest size hearing board of disinterested civilians with a small investigative staff.

I hope these comments are helpful.

With best regards,

JOSEPH L. SAX,  
Professor of Law.

## 5. THE HISTORY OF AMNESTY IN AMERICA

Excerpts from a Statement by  
Professor Henry Steele Commager\*

Traditionally, it is the executive that has taken the initiative in granting amnesty, but recent executives have displayed less interest in amnesty than was customary in the nineteenth century; thus there was no amnesty after the Korean war and has been none so far in this war. It is therefore reassuring to see the Congress take the initiative in this matter so fraught with importance to the harmony of society and to the sense of justice. . . . As I think desertion and draft evasion are inextricably part of the same problem, what I have to say this morning will apply to both categories of offenders.

We do not have, and in the circumstances we cannot have, accurate statistics of desertion and draft evasion for the past seven years. It seems probable that desertion has been as high in the war in Southeast Asia as in any war in which we have ever been involved, though as during the Civil War draftees were allowed to buy substitutes, the comparison is bound to be faulty. In 1970 the desertion rate in Vietnam was 52 per thousand -- twice the rate of the Korean War; up to September 1971 it was 73.5 per thousand; many of these deserters were subsequently returned to military control. As for draft evaders, estimates run from fifty to one hundred thousand, but as many potential draftees took cover before being formally inducted, these figures are almost meaningless. This high incidence of desertion and draft evasion is not, I submit, a commentary on the American character, but a commentary on the war; after all, there was neither large-scale desertion nor draft evasion in World War II, and the national character does not change in a single generation. What is by now inescapably clear is that the Vietnam war is regarded by substantial elements of our population -- particularly the young -- as unnecessary in inception, immoral in conduct, and futile in objective; what is clear, too, is that more than any war since that of 1861-65 it has caused deep division and bitter dissension in our society. The task which

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\* The statement was made before the Senate Subcommittee on Administrative Practice and Procedure, Hearings on Amnesty, March 1, 1972. Mr. Commager is Professor of History, Amherst College, Amherst, Mass.



confronts us, then, is not dissimilar to that which confronted Presidents Lincoln and Johnson. It is not merely that of ending the conflict in Asia, but of ending the conflict at home, of healing the wounds of war in our society, and of restoring -- it is Jefferson speaking -- "restoring to social intercourse that harmony and affection without which liberty and even life itself are but dreary things."

The term, and the concept of, amnesty is very old. The word itself is Greek -- Amnestia -- and means forgetfulness, oblivion, the erasing from memory.\* I cite this not out of pedantry but because it illuminates the problem [of] whether there can in fact be conditional amnesty. Can there be partial oblivion, can there be a qualified erasing from the memory? Can it be supposed that draft evaders who [are] out and presumably expiating their sins for a period up to three years will during these years of forced service forget or erase from their memory this whole unhappy chapter of their history and ours? Can it be supposed that after the guns have fallen silent and the bombs have ceased to rain down on the stricken lands of Vietnam and Laos, deserters who are tried and punished for their military offenses will be able to put the war out of their minds? And indeed, can it be supposed that while these unfortunates are doing penance in various ways, the nation will be able to forget, or to consign to oblivion, the deep moral differences which animated those who fled their country or their regiments rather than violate their consciences? If it is forgetfulness and oblivion we want, or even reconciliation and harmony, we shall not receive it by this labyrinthine route.

. . . The argument for amnesty is threefold: historical, practical, and ethical. It is to the interesting question of experience, the illuminating question of expedience, and the elevated question of moral obligation that we should address ourselves.

. . . The American Revolution was a civil war. Those who supported the Crown -- John Adams estimated them at one third the total population -- were exposed to the obloquy and persecution that attends most civil wars. . . . During and after the war some eighty thousand Loyalists fled the country, mostly to Canada. A few returned, but public opinion -- and legislation -- was so implacably hostile to Loyalists that the vast majority preferred exile. Thus for want of magnanimity, the new nation -- a nation which needed all the resources it could obtain -- lost a substantial and valuable segment of its population . . . and earned an international reputation for harshness and rancor. Desertion was, as we all know, endemic in Washington's army --

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\* There is the highest judicial sanction for this definition: "Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness," said the Supreme Court, Knote v. U.S., 95 U.S. 149.

which all but melted away at Valley Forge -- but after the war was over no effort was made to punish wartime deserters. As President, Washington established the precedent of generosity for those guilty (or allegedly guilty) of insurrection: he proclaimed amnesty for participants of the Whiskey Rebellion, observing, in words that are relevant for today, "Though I shall always think it 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." (I Richardson, 266.) John Adams took the same attitude towards the so-called Fries Rebellion of 1799, granting "a full, free and absolute pardon to all and every person concerned in said insurrection." Jefferson in 1807 pardoned all deserters from the army of the United States who returned to their units within four months; Madison issued no less than three proclamations of the same nature, covering deserters in the War of 1812. President Jackson's Amnesty of 12 June 1803 had an interesting twist to it; he pardoned all deserters from the army provided they would never again serve in the armed forces of the United States!

It is the Civil War which provides us with the best analogies and, I think, the best models for our own time. Desertion from both Union and Confederate armies ran to roughly 10 percent -- rather above than below that figure. Draft evasion was widespread and flagrant, complicated in the North by what was called "bounty-jumping", that is, multiple enlistments and desertions designed to collect bounties. While neither draft dodgers nor deserters constituted a danger in the North, they did in the South; it was said -- on what authority is not clear -- that there were more deserters and draft evaders in the mountains of the Carolinas, in 1864, than there were soldiers in Lee's army. Appomattox put a period to the problem in the South; no action was taken against either deserters or draft evaders after the end of the war in the North.

What is illuminating, however, is the attitude of Presidents Lincoln and Johnson towards southerners who had engaged in rebellion and were, technically, guilty of treason. . . . Lincoln's position was clear and consistent. During the war itself he issued a series of amnesty proclamations designed to bring Confederates back into allegiance and to get government in operation in the South. He had been unwilling to "let the erring sisters go in peace" -- as Horace Greeley recommended -- but he was ready to let them return in peace. Congressional radicals wanted to punish the South for its treason by excluding southern states from full membership in the Union: in the end, as we know, they succeeded at least in part. Lincoln would have none of this; indeed, he regarded the question of legal status of the Confederate states as "a pernicious abstraction."



"Finding themselves safely at home," he said -- what might be said of our draft evaders, who after all did not bear arms against the United States -- "it would be utterly immaterial whether they had ever been abroad." And how fascinating Gideon Welles's recollection of that last Cabinet meeting which discussed the question of capturing Confederate leaders and bringing them to trial. "I hope there will be no persecutions," said Lincoln, "no bloody work after the war is over. No one need expect me to take any part in hanging or killing those men, even the worst of them . . . enough lives have been sacrificed."

Who can doubt, now, that Lincoln's policy of magnanimity was wiser and more farsighted than the radical policy of punishment? Even the Radicals were not vindictive by modern standards. How gratifying it is to recall that the United States put down the greatest rebellion of the nineteenth century without imposing on the guilty any formal punishment. Not one leader of the defeated rebels was executed; not one was brought to trial for treason. There were no mass arrests, no punishment even of those officers of the United States Army and Navy who had taken service in the Confederacy. No soldier who wore the gray was required to expiate his treason, or his mistake, by doing special service, none was deprived of his property -- except property in slaves -- or forced into exile by governmental policy. What other great nation, challenged by rebellion, can show so proud a record?

We can dispose with lamentable brevity of the record in the present century, for it is a brief one. There was no general amnesty for draft evaders or deserters after World War I. Indeed, those guilty of violating the Espionage and Sedition Acts -- among them Eugene Debs -- languished in jail while President Wilson was in the White House. . . . No major war in which we have engaged saw fewer desertions or draft evasions than World War II -- a war which almost all Americans thought necessary and just. Yet when Vice-President Truman came to the presidency, in 1945, there were some fifteen thousand draft evaders and other offenders against the military law in federal custody. Truman appointed a committee, headed by Justice Owen Roberts, to advise him on what action he should take. The committee advised against a general amnesty and recommended individual consideration of each case. This advice was accepted; only one-tenth of those in jail were actually released, however -- not a very gratifying result.

More important than historical precedents, however illuminating, are considerations of wisdom and of morality. Here we come, I think, to the heart of the matter. 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 the moral order -- out of petulance or vindictiveness. It bases its judgment rather on the interests of the Commonwealth. Nor do statesmen indulge in what

Lincoln called "pernicious abstractions" -- abstractions about whether magnanimity to some will somehow be unfair to others. After all, who knows what is ultimately just, or what will ultimately 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 appear to be the long-range interests of the nation.

When we consider the problem of amnesty in this light, there are a number of considerations which clamor for our attention:

1. There is the consideration that those who deserted either the draft or the army were not young men indulging themselves in reckless irresponsibility, or confessing cowardice. They were, and are -- we must concede this in the face of a resistance so massive -- acting quite sincerely on conscience and principle. After all, this is the position that wise and objective judges of the Supreme Court accepted in both the notable conscientious objector cases -- U.S. v. Seeger and Welsh v. U.S. . . .

2. Nor can we overlook another consideration, that in many ways the deserters and draft avoiders of today are like the "premature antifascists" of the 1930s, who suffered persecution during the Joseph McCarthy era because they had fought Fascism abroad before the country caught up with them. May we not say that the majority of those who have deserted or gone underground merely took "prematurely" the position which the majority of Americans now take . . .

3. There is a third consideration which affects a substantial number of those it is now designed to deal with by amnesty -- a group who may be designated premature moral objectors. For as all of you know, the legal interpretation of what constitutes acceptable objection on grounds of conscience has changed. That change began as early as 1965, in the notable case of U.S. v. Seeger (380 U.S. 163), which extended exemption from the draft to those who embraced a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." Speaking through Mr. Justice Clark, the Court held that Seeger was entitled to exemption "because he decried the tremendous spiritual price man must pay for his willingness to destroy human life." In 1965 the Court still required, as a legal basis for exemption, some belief, however vague or remote, in a Supreme Being. But by 1970 the Court was prepared to accept moral and ethical scruples against the war as meeting the requirements which the Congress had set for exemption on account of conscience. That requirement, wrote Justice Black, "exempts from military service all those whose conscience, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become part of an instrument of war." (398 U.S. 333, at 334. Italics added.)



Clearly if those whose opposition to war is based not on formal religious beliefs but on moral and ethical principles are now exempted from service, then those with the same beliefs who were denied C.O. exemption in the past have an almost irresistible claim on us for pardon or amnesty.

There are, to be sure, some serious objections to be met . . . objections based on considerations of public policy. It is alleged, for example, that a sweeping amnesty would somehow lower the morale of our fighting forces. . . . there seems to be no objective evidence to support this argument. It does not appear that amnesty worked this way in the past, in those relatively few instances when it was applied while the war was still going on.

There is a further point here. 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 the Vietnam, it will once again be in for trouble? After all, governments, like individuals, must learn by their mistakes, and though the process of teaching government not to make mistakes is often hard on those who undertake it, it is also often very useful. . . . If the war in Southeast 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 dramatize that mistake?

For almost a decade now our nation has been sorely afflicted. The material wounds are not as grievous as those inflicted by the Civil War -- not for Americans anyway -- but the psychological and moral wounds are deeper, and more pervasive. Turn and twist it as we may, we come back always to the root cause of our malaise, the war. If we are to restore harmony to our society and unity to our nation we should put aside all vindictiveness, all inclination for punishment, all attempts to cast a balance of patriotism or of sacrifice -- a task for which no mortal is competent -- as unworthy a great nation. Let us recall, rather, Lincoln's admonition to judge not that we be not judged, and with malice towards none, with charity for all, strive on to bind up the nation's wounds.

## 6. AMNESTIES IN U.S. HISTORY\*

List Prepared by  
Professor Joseph Sax

Date, issued by, persons affected and nature of action,  
and time lapse from offense to proclamation (in months):

July 10, 1795, Washington, Whiskey Insurrectionists  
(several hundred). General pardon to all who agreed to there-  
after obey the law, 13.

May 21, 1800, Adams, Pennsylvania Insurrectionists.  
Prosecution of participants ended. Pardon not extended to those  
indicted or convicted, 14.

Oct. 15, 1807, Jefferson, Deserters given full pardon  
if they surrendered within 4 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, Pirates who fought in War of  
1812 pardoned of all previous acts of piracy for which any suits,  
indictments or prosecutions were initiated, 60 from first  
offense; 5 from final offense.

June 12, 1830, Jackson (War Dept.), 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 Dept.), 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, 24.

Feb. 26, 1864, Lincoln (War Dept.), 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 citizenships. 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), 36 from first offense.

July 3, 1866, Johnson (War Dept.), 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, 84 from first offense.

Dec. 25, 1868, Johnson, All rebels of Confederate States (universal and unconditional), 84 from first offense.

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.

Jan. 4, 1893, Harrison, Mormons -- liability for polygamy annulled, 132 from first offense; 24 from last offense.

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, 1989, Congress, Universal Amnesty Act removed all disabilities against all former rebels.

June 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 (nor 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 W.W. I armistice, up to 72.

Dec. 23, 1933, F. Roosevelt, 1,500 convicted of having violated espionage or draft laws (W.W. I) who had completed their sentences, up to 192.

Dec. 24, 1945, Truman, Several thousand ex-convicts who had served in W.W. II for at least one year. (Proclamation 2676, Federal Register, P. 15409.)

Dec. 23, 1947, Truman, 1,523 individual pardons for draft evasion in W.W. II, based on recommendations of President's Amnesty Board.

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 Aug. 15, 1945 and June 25, 1950.



We feel that amnesty is not only a just solution but, as has been pointed out, a practical solution. The problem is not going to go away. The resisters are in limbo year after year, and we think it is time the terrible victimization of this whole Vietnam era be stopped.