

AMNESTY AND THE VIETNAM WAR

---

A Thesis

Presented to

the Faculty of the Institute of Contemporary Corrections  
and the Behavioral Sciences

Sam Houston State University

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In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

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by

Bobbie J. Marshall

December, 1975

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## ABSTRACT

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### Purpose

The objectives of this study were: (1) To survey the history of amnesty in America as well as other selected countries; (2) To ascertain whether or not precedents, concerning amnesty in the United States, have been set; (3) To define the categories of political offenders in the United States; (4) To determine the arguments for and against the granting of amnesty; (5) To determine conclusively the best action to be taken with respect to the American Vietnam War resisters.

### Methodology

The methodology used in this study to accomplish the objectives were: (1) Collect data from agencies and organizations concerning amnesty; (2) Collect data concerning historical amnesties; (3) Personal interviews with Vietnam Veterans; (4) Review literature on the amnesty issue; (5) Correspond with Gold Star Parents for Amnesty; and (6) Refine data to indicate similarities and differences in American amnesties.



## Conflict

### A. Arguments Against Amnesty:

1. The political offender has committed an illegal act and should have to stand punishment for committing a crime.
2. To grant amnesty would be to make a mockery out of the military service.
3. To grant amnesty to those who resisted would be to tell those who suffered bodily injury or lost loved ones in the war that their loss was of no benefit.
4. The majority of the people of the United States are opposed to the granting of unconditional amnesty.

### B. Arguments For Amnesty:

1. To unite the country
2. To allow the country to make use of her exiles
3. To honor the feelings of the Gold Star Parents for Amnesty
4. To allow Americans the right of disapproval on immoral grounds
5. To recognize that the Vietnam War may have been illegal
6. To honor religious views
7. To accept that man reacts out of moral conscience

## Conclusion

Research supports the conclusion that the only fair and just solution of the Vietnam War resisters is unconditional amnesty. The people of the United States have suffered long enough from the division of the country, placed there by the military involvement in Vietnam. Unconditional amnesty is a recourse which would unify the country. By solving this problem of the past, the problems of the future could then be faced.

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# CHAPTER I

## THE SCOPE AND HISTORY OF AMNESTY

### A. THE SCOPE OF AMNESTY

Amnesty is much more than the law's forgiving or pardoning an offender. It is the law's forgetting of certain acts. The word comes from the Greek amnestia, which means forgetfulness or oblivion, and implies an act of the legal sovereign conceding a voluntary removal from memory of certain crimes committed against the state. It is a legal oblivion usually of political offenses such as treason, sedition and rebellion. In amnesty the criminal consequences of the absolved act are destroyed (Encyclopaedia of the Social Sciences, 1935). Amnesty is the decision of a sovereign state to abstain from prosecuting groups of people who are in conflict with the law for political reasons. It is addressed generally to classes or communities and takes the form of a legislative act or other constitutional or statutory act of the supreme power of the state (Encyclopaedia Britannica, 1965).

Amnesty is not a right. It is in fact a discretionary act. In forgetting, amnesty does not consider guilt or innocence; it merely is a decision not to apply a law under certain circumstances. Amnesty is usually granted after there has been a change in the political climate which led to the alleged violations.

Pardon and amnesty differ. However, in many cases the terms are used interchangeably. The Supreme Court of the United States, in the case *United States vs. Bassett*, 1887, states that a pardon relieves an offender of the consequences of an offense of which he has been convicted, while amnesty obliterates an offense before conviction; and in such case, he stands before the law as though he had committed no offense (*U. S. v. Bassett* 5 Utah 133 (1887) ). In *Burdick vs. United States*, 1914, the court defined the concept of amnesty as compared to pardon:

The one (amnesty) overlooks offense; the other (pardon) remits punishment. The first is usually addressed to crimes against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the state [Freeman, 1971, p. 7].

*State vs. Blalock*, 1867, is usually taken as the classic statement in state courts:

"Amnesty" and "pardon" are not precisely the same. Pardon is granted to one who is certainly guilty, sometimes before, but usually after, conviction. Courts take no notice of it unless pleaded or claimed by the person pardoned, and it is usually granted by the crown or by the executive; but "amnesty" is to those who may be guilty, and is usually granted by the Parliament or the Legislature, and to the whole classes before trial. "Amnesty" is the abolition or oblivion of the offense; "pardon" is its forgiveness [Freeman, 1971, p. 7].

Though these two terms imply different meanings, the concepts of pardon and amnesty are interrelated. Historically, amnesty came about as the result of general



pardoning powers of ruling authorities (Encyclopaedia of the Social Sciences, 1935).

According to the United States Constitution, Article II, Section 2, the Chief Executive has the power to pardon all federal offenses, except impeachment. "... and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment [Hicks & Mowry, 1956, viii]." Congress has also granted pardons and immunity from prosecution and the Fourteenth Amendment, Section 3, imposed disabilities on the former Confederates which were not allowed to be removed except by an act of Congress.

No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability [U. S. Constitution, amendment XIV, Sec. 3].

In some cases the Supreme Court has ruled that the President is empowered to grant a pardon and not amnesty; consequently, Congress can grant amnesty. In other rulings, it has been noted that there is no difference between either pardon or amnesty and that the power of the President is not exclusive, but shared by Congress (Sherman, 1974). There are some who firmly believe that the power to grant amnesty belongs only

to the United States Congress. One such advocate states, "I hold also that although the original Constitution nowhere placed the amnesty power specifically, it follows the same general rule as in the British system, that is that it belongs to Parliament or the people [Freeman, 1971, p. 8]."

A post Civil War dispute between the Congress and the President over the power to grant amnesties was resolved by Supreme Court decisions which gave effect to Presidential amnesties. The Supreme Court refused to distinguish between the power to pardon and the power to grant amnesty, and held that the power to pardon does in fact include the power to grant amnesties (U. S. v. Klein 80 U. S. (13 Wall) 147 (1872) Armstrong v. U. S. 80 U. S. (13 Wall) 156 (1872) ).

There are two types of amnesties: general amnesties, which cover all classes of offenders, and particular amnesties, which are limited to specific or special groups, sometimes with specific exceptions.

Whether the amnesty be general or particular, it can also be universal or conditional. Universal amnesty refers to the granting of amnesty to all without conditions on the recipient while conditional amnesty demands performance of certain tasks or duties before the amnesty is effective.

## B. HISTORICAL DEVELOPMENT OF AMNESTY

In order to understand the controversial issue of amnesty, it is necessary to look at amnesties in the past



and the reasons for granting amnesty. Examples of amnesty from selected countries will be considered first, followed by the development of amnesty in the United States.

The first recorded amnesty was proclaimed in Athens in 403 B. C. when Thrasybulus, an Athenian general, forbade punishment of Athenian citizens for their past political acts (Dorjahn, 1946). The amnesty occurred upon the immediate return of the Athenian exiles from the Piraeus. Provision for the establishment of the amnesty of 403 B. C. was made in the terms of peace which must have been accepted and ratified in their entirety before the exiles return from the Piraeus. It appears that the amnesty was regarded as a voluntary measure on the part of the exiles, and all Athenians took the oath of amnesty and gave a special pledge, promising to forgive and forget the unhappy past (Dorjahn, 1946).

This being the first amnesty recorded, it is important to note the agreements. "Isocrates indicates quite clearly that there were specific points in the amnesty agreement itself, absolving denouncers, informers, and other people of that type [Dorjahn, 1946, p. 24]." The amnesty of 403 B. C. found admiration from the Greeks, whether they were friend or foe, and was considered a "noble, patriotic, and magnanimous measure in its conception and institution [Dorjahn, 1946, p. 40]." Dorjahn, in his book Political Forgiveness In Old Athens, quotes Balogh as saying,

We are here concerned with the first amnesty in the Greek world that was as perfect in both form and content as could be. It achieved a new harmony amongst the people of Athens, torn by passion and hatred. Wherever it may be necessary to restore civic peace in a state after revolutions, this Greek example should be considered and imitated [Dorjahn, 1946, p. 54].

France has employed amnesties after virtually every civil strife. These were called lettres de remission generale or lettres d'abolition. Probably the most famous was the Edict of Nantes, a proclamation issued by Henry IV in 1598 which put an end to persecution and gave legal status and religious liberty to the Huguenots. Napoleon's imperial decree of 1802 provided amnesty as well as did amnesties after the 1871 civil disturbances and the Paris Commune of 1881 (Swomly, 1969).

Significant among amnesties in England were those granted in 1651 after the Civil War and in 1660 after the restoration of Charles II. Parliament, in 1660, approved the Act of Indemnity and Oblivion. It excused from prosecution, those who had been on the losing side and restored their confiscated lands. This amnesty did not include those who had condemned Charles I to death for treason in 1649.

Other notable amnesties in English history came two centuries later when Parliament, in the Fenian's Act of 1873, offered amnesty to the imprisoned Irish rebels who had fought to free Ireland from English rule. Again in

1903, England extended amnesty to the losers in the Boer War. The British allowed all prisoners to go home and agreed not to punish those who participated in the war (World Book Encyclopedia, 1968).

Examples of amnesty come as late as 1972 in the Australian government. In Prime Minister Edward Gough Whitlam's first few days of office, he announced the end of military conscription and a release of all draft offenders. The number of offenders serving time was small, and the move by the Prime Minister drew no protest--even from the service-men's organization. Since 1966, there were some 9,000 draft-age Australians who had refused to register for the draft; and of this number, 1600 were prosecuted. Only fifteen out of the 1600 actually went to jail, however (Australia, "Amnesty," 1972).

## AMNESTY IN AMERICA

### EARLY HISTORY

Amnesty had its historical inception in the United States in 1795. President George Washington granted a general pardon to all Whiskey Rebellion participants who would agree to obey the law (Sherman, 1974). This amnesty was a result of farmers' rebelling against the liquor tax.

Alexander Hamilton, Secretary of the Treasury, had proposed the excise to raise money for the national debt and to strengthen and assert the power of the national

government. The small farmers of the back country usually converted their excess grain into whiskey because this was the only way they could get their grain to market. Spain had closed the Mississippi River to American trade. Whiskey had also become a medium of exchange where hard money was in short supply (Damon, 1973).

The farmers first resisted the tax by attacking revenue officers when they attempted to make collection. Enforcement legislation touched off what appeared to be an organized rebellion, and in July of 1794 about 500 armed men attacked and burned the home of the regional tax inspector. President Washington issued a proclamation ordering the rebels to return home and authorized an army of some 13,000 from several states to occupy the region. Some of the rebels were tried, but only two were found guilty (Damon, 1973).

On July 10, 1795, Washington proclaimed "A full, free and entire pardon to all persons ... of all treasons, ... and other indictable offenses against the United States committed within the fourth survey of Pennsylvania before the said 22nd day of August last past ....

Exceptions were made of those who "refused or neglected to give assurance of submission to laws of the United States; violated such assurances after they were given; or willfully obstructed or attempted to obstruct the execution of the acts for raising a revenue on distilled spirits ... or by aiding or abetting therein ... [Amnesty: A Brief, 1972, p. 9].

After having claimed a "full and free pardon," President Washington explained why he forgave the convicted rebels.



Though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet it appears to me no less consistent with the public good than it is with my personal feeling to mingle in the operations of the government every degree of moderation and tenderness which justice, dignity and safety may permit [Shaffer, 1972, p. 609].

Following this first amnesty in the United States there were several granted between the years 1800 and 1860.

In 1799 a band of Pennsylvanians, who were rebelling against the laws for the tax evaluation of land, freed the prisoners from a United States marshal and prevented him from performing his duties (Amnesty: A Brief, 1972). This rebellion was known as the Fries Uprising, named for John Fries, a roving auctioneer who led the insurrection. Fries and two of his officers were found, brought to trial, found guilty, and sentenced to hang. When President Adams heard of the penalty imposed on the three men, he assembled his cabinet for consultation on the matter. The cabinet unanimously opposed the view of pardon, and the president decided to "take on myself alone the responsibility of one more appeal to the humane and generous natures of the American people [Damon, 1973, p. 9]."

In May of 1800, John Adams granted an amnesty to the three condemned men and all of those who participated in the insurrection.

President Adams granted " ... a full, free, and absolute pardon to all and every person or persons concerned in said insurrection ... of all treasons,

misprisons of treason, felonies, misdemeanors, and other crimes by them respectively done or committed against the United States ... [Amnesty: A Brief, p. 10]."

Prior to and during the War of 1812 several proclamations of amnesty were given. At the onset of the war in 1812 Congress authorized a 166,000-man Army to be drawn from the state militias to supplement the 7000-man Regular Army. Several New England States refused, and recruiting was difficult in other areas as well. In 1814, following two years of defeat which saw the burning of Washington, President Madison asked for a Congressional draft of 40,000 men. Before the issue could be resolved, the war ended and the draft issue was dropped. During this time, however, President Madison had issued three separate amnesty proclamations. It was the President's hope to bring the small Regular Army up to strength by offering amnesty. The proclamations offered a full pardon to all who surrendered within four months. One amnesty was given after the war ended, and was extended to all pirates and smugglers in the vicinity of New Orleans who could prove they aided in the defeat of the English troops. The proclamation required proof from the Louisiana governor that the pirate had taken part in the successful defense of New Orleans and had not been involved in an act of piracy after January 8, 1815 (Damon, 1973).

Nearing the 1830s, Congress redrafted the military code repealing the death penalty for peacetime desertion. President Jackson, on June 12, 1830, extended pardon to deserters subject to these provisions: "Those in confinement were to be released and returned to duty; those at large and under sentence of death were to be discharged and never again enlisted in the service of the country [Amnesty: A Brief, 1972, p. 10]."

In summary, it can be noted that the early amnesties in America's history simply required that the offenders pledge their full cooperation and support to the United States. The amnesties were generally acts of compassion by the President of the United States.

#### CIVIL WAR

Historically, it is the Civil War which provides the best model of amnesty. Desertion from the Union and Confederate Armies ran slightly above ten percent. Draft evasion was widespread and complicated by "bounty-jumping" in the North. Many young men lacked a purpose for fighting the war and were torn between family, friends, and country.

During the Civil War, Congress delegated to the president the power to pardon and grant amnesty to those participating in the rebellion (Freeman, Congress Bestows, 1972). Lincoln used his power twice and Johnson four times.

It is important to understand the attitude of President Lincoln toward those Southerners who had

participated in the rebellion. Technically, those men were guilty of treason. However, it was Lincoln's feelings that all efforts should be made to bring the Southerners back to the loyalty of the United States rather than to punish them severely and threaten this return.

Before looking at the proclamations of amnesty, it is valuable to know the sentiments of President Lincoln regarding the South and government.

First, Lincoln believed in practical performance of the government rather than legal dictates of abstract principles. He endeavored to find workable policies and solutions to problems in governmental affairs.

Second, President Lincoln was sympathetic toward the Southerners, and his general attitude was tempered by devotion to the Whig Party (Dorris, 1953). He believed and hoped that war between the states would be avoided.

War came and families and friends who had lived together closely for years now were fighting against each other. It did not take long for some to tire of war; and as early as the summer of 1862, amnesty was suggested. According to Dorris, in Pardon and Amnesty Under Lincoln and Johnson, General B. F. Butler wrote to Secretary of War Stanton telling him that the people of Louisiana were tired of war and that they would gladly return to their allegiance if they were assured that the past would be forgiven them.



An offer of amnesty came in December of 1863 as Lincoln began attempts to unify the country with his Proclamation of Amnesty and Reconstruction. The Proclamation, as seen in Appendix A, states that there shall be offered a full and free pardon to those in the rebellion and a restoration of property, simply by taking and maintaining the following oath:

I, \_\_\_\_\_, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect and defend the Constitution of the United States, and the union of the States thereunder; and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified or held void by Congress, or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God  
[Rutgers, 1953, p. 54].

The oath of allegiance became a test of loyalty to the Union (Dorris, 1953).

The reactions from parts of the Confederacy to the proclamation were hostile. The press of the Confederate capital condemned the proclamation, and the authorities of the Confederacy referred to Lincoln as an "imbecile and unprincipled usurper, who now sits enthroned upon the ruins of unconstitutional liberty [Rutgers, 1953, p. 59]."

In Lincoln's Proclamation of Amnesty, there were six classes of people who were excepted from the pardon.

The persons excepted from the benefits of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of so-called confederate government above the rank of colonel in the army, or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the army or navy of the United States, and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons or white persons, in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service, as soldiers, seamen, or in any other capacity [Rutgers, 1953, p. 55].

The exceptions came as no surprise to many who knew the President, because they were aware that he had felt that the leaders of the Confederacy were responsible for the rebellion and in fact deserved some degree of punishment.

Men who were suspected of wanting the pardon and taking the oath were met with much hostility. "Their room-mates drive them out of the quarters at night ... and personal violence is often inflicted on those who are suspected of wishing to take the oath of amnesty [Dorris, 1953, p. 59]."

In February of 1864, the War Department mitigated the sentences of deserters from death to imprisonment and authorized the generals to place the deserters in active duty wherever it was good for the service (Amnesty: A Brief, 1972).

On March 26, 1864, President Lincoln found it necessary to issue a second proclamation clarifying and defining

those insurgent enemies that were entitled to the benefits of the Proclamation of December 8, 1863. In this proclamation, as can be seen in Appendix A, the President proclaimed that civil and military prisoners were not eligible for the amnesty but they could apply " ... for clemency like all other offenders, and their applications will receive due consideration [Rutgers, 1953, p. 270]." "The previous proclamation was held applicable only to persons at large who voluntarily took the oath 'with the purpose of restoring peace and establishing the national authority' [Amnesty: A Brief, 1972, p. 13]."

A year following the first proclamation of amnesty, President Lincoln addressed the Congress, telling them that the doors to amnesty would not always be open, and the time would probably come when public duty would demand it to be closed. He stated that more vigorous measures would be adopted in the future.

An act of Congress in March 1865, set a forfeiture of citizenship as the punishment for desertion and the President was authorized to issue a proclamation to the effect that all deserters who returned to their regiments within sixty days would be pardoned, on the condition that they serve a period of time equal to their original enlistment period (Rutgers, 1953).

In April, President Lincoln was assassinated and Andrew Johnson became President of the United States. He



was a Southerner and a Democrat and was not from the aristocratic ruling side of the government. Johnson's tactlessness and dislike for the Southern leaders was common knowledge and led the Radicals (Republican Extremist) to believe that "he would become a pliant tool" in their hands [Hicks, 1956, p. 386]. The President surprised everyone, however, by his generosity toward the South; and on May 29, 1865, he granted a full pardon to all former Confederates who took an unqualified oath of allegiance to the United States. Even some leaders were excepted.

Many members of the Congress disagreed with the President's action, and a struggle resulted between Congress and the President over the constitutional question of authority to grant pardon and amnesty.

On January 21, 1867, Congress repealed Section 13 of the Confiscation Act of 1862, which gave the President the authority to proclaim amnesty and pardon. Johnson ignored the repeal and extended three amnesties. In 1867, he offered full pardon to "all persons participating in the late rebellion" who would take an oath of allegiance. However, there were exceptions to this amnesty. Then on July 4, 1868, he extended the same type of amnesty, excepting those under indictment for treason or felonies; and finally on December 29, 1868, President Johnson granted a full, unconditional pardon and amnesty to "all persons engaged in the late rebellion [Amnesty: A Brief, 1972, p. 15]."

Congress was outraged but did nothing at the time. With the ratification of the Fourteenth Amendment in July 1868, the Congress again became involved in the process of pardons and amnesties. Section three of the amendment barred from Federal or State office anyone who had taken an oath to support the United States Constitution and had engaged in rebellion or insurrection against the United States. However, the amendment did give the Congress, with a two-thirds vote, the authority to remove such disabilities (Hicks, 1956). (See Amendment 14, Sec. 3 in Appendix B) Dorris pointed out:

For nearly ten years after the promulgation of the Fourteenth Amendment, Congress gave much time to the removal of disabilities thus imposed. Sometimes these private acts, as in the case of R. R. Butler, applied to only one person; at other times, as in the law of July 25, 1868, they applied to many. In every such measure the names of the beneficiaries were given, even when the lists were long; and as in the case of petitions to the President for pardon in 1865 and 1866, the requests to Congress for removals were numerous. Each appeal was expected to receive special consideration to determine its merits. This required much time that might well have been devoted to other needed legislation, but Congress continued to make removals in special acts until, by March 4, 1871, 4,616 persons had been relieved [Dorris, 1953, p. 368].

"Finally, in 1898 ... , when almost all of the leading Confederates were dead anyway--a universal amnesty bill was passed at last [Schardt, et al, p. 71]."

The amnesties given during this period were basically given from a need to unify the country. The war had caused families, friends and neighbors to choose sides and as a

result, they were torn apart. After the war, much healing had to take place in order for the United States to prosper. Lincoln and Johnson both felt the urgent need to bring the country together. Again, as in the early American amnesties, the President used his power to bestow amnesty on all those who would simply take an oath of allegiance to the United States.

#### SPANISH AMERICAN WAR

At the turn of the century, amnesty was once again offered. This time it was to Filipinos. The annexation of the Phillipines was a costly war both in lives and money. The United States employed rebels in the capture of Manila; and when the terms of the Treaty of Paris were made known, the Filipinos refused to accept the American take-over and began to fight them. It took two years to end the insurrection, and on July 4, 1902, President Roosevelt offered a conditional pardon and amnesty for those who had participated in the insurrection (Damon, 1973).

#### WORLD WAR I

No general amnesty was extended to draft evaders of World War I, who numbered some 200,000. If caught and found guilty, they would have been subject to up to five years in prison. There were also some 4,000 known conscientious objectors, many of whom were mistreated and confined to army camps, and some of whom were subjected to court-martials for minor infractions of discipline (Shaffer, 1972).



During the war, there were also some 2,000 political prisoners who were found guilty and imprisoned under two wartime acts. These were the Espionage Act of 1917 and the Sedition Act of 1918. The latter Act prohibited the use of profane or abusive language against the government or its leaders. Punishment for these offenses carried fines up to \$10,000 and imprisonment up to twenty years. Hundreds who opposed the war were sent to prison. One of them was Eugene Debs, the Socialist Party's presidential candidate. In 1918 he was sentenced to ten years confinement (Damon, 1973).

After the Armistice was signed, various peace groups began to seek amnesty but without success. Wilson refused to even consider the matter of amnesty either for pardons of groups or of individual cases. It is recorded that Wilson spoke to an aide concerning the amnesty of Eugene Debs saying,

I will never consent to the pardon of this man ... . Were I to consent to it, I should never be able to look into the faces of the mothers of this country who sent their boys to the other side. While the flower of American youth was pouring out its blood to vindicate the cause of civilization, this man Debs, stood behind the lines, sniping, attacking, and denouncing them ... . This man was a traitor to his country and he will never be pardoned during my administration [Damon, 1973, p. 78].

He was finally pardoned along with twenty-three other political prisoners on Christmas Eve, 1921, by Warren Harding (Damon, 1973).

In 1924, President Coolidge granted amnesty to some one hundred persons who had deserted since the Armistice of World War I. Then in 1933, when President Roosevelt took office, he granted pardons to approximately 1500 who had been convicted of violating the draft and espionage acts of World War I.

The amnesties related to World War I primarily were bestowed some fourteen years following the end of the war. The amnesty was also bestowed by a president who was not in office at the time of the violations.

#### WORLD WAR II

After World War II, President Truman appointed a committee to advise what to do concerning some 15,000 draft evaders who had been convicted. The committee recommended an Amnesty Board which would review case by case rather than grant a general amnesty. In the last two days of Truman's administration, he issued two proclamations.

The first pardoned ex-convicts who had served not less than one year in the armed forces after June 25, 1950 ... . The second amnestied all persons who having deserted between July 14, 1945, and June 25, 1950, were consequently court-martialed or dishonorably discharged or both. The effect was to mitigate punishment by restoring voting, office-holding and other civil rights [Amnesty: A Brief, 1972, p. 20].

In summary, the burden of a case by case review was too laborious for the Amnesty Board and eventually the Board ceased to exist and function. The amnesties which were given



by President Truman were for the purpose of restoring civilian privileges to the offenders.

## CHAPTER II

### CATEGORIES OF OFFENDERS

The purpose of this chapter is to define the meaning of political offender. In this thesis the term political offender refers to those people whose crimes are a direct result of the war. It follows that were there no war, they would not have been guilty of committing a criminal act. The purpose of this chapter will be to identify the major categories of political offenders associated with the Vietnam War and indicate the proportion of persons of each type.

It is impossible to look at all of the offenses and military crimes of those who fought in the Vietnam War, for they are too numerous to identify. There are, however, specific categories that deserve attention with relation to the subject of amnesty. It is the offenders in these categories who the groups supporting the view of amnesty feel should be given universal and unconditional amnesty.

During the Vietnam War literally thousands resisted the war. Many of these found legal methods of resistance by staying in school, getting jobs which carried draft exemptions, obtaining medical deferments, becoming conscientious objectors, or getting exempted by some other possible means. Nevertheless, these were all resisters of the war. They did not serve. For many of these resisters it was a matter of

having enough money, knowing the right people or having the knowledge available to them to avoid the draft. Regardless of these legal exemptions, these people in fact became resisters of the war and yet received no penalty. To the less fortunate who were drafted and could not find legal resistance to the war, the knowledge that some young men did not have to serve in itself brought increased negative sentiments toward the war.

Examination of the literature indicates that there are five specific categories of offenders. They are draft violators, deserters, exiles, dishonorable discharges and civilian resisters and protestors.

#### A. Draft Violators

There are two general categories of draft violators: those who failed to register for the draft and those who had registered, but when called failed to appear at the induction center. The number of draft evaders is difficult to calculate because registration and reporting of the Selective Service was not uniform throughout the United States. In many cases, the federal authorities were not notified of the registration problems until all had been done on the local level; then the appropriate United States attorneys were notified. However, there are statistics available concerning prosecutions by the Justice Department.

As of the end of January 1972, a total of 6,091 persons had been indicted for Selective Service violations and another 12,333 cases of possible violators had been reported to United States attorneys. Of that number, some 4,201 persons were fugitives. In June 1971, only 315 men were actually in prison for draft evasion [Amnesty: A Brief, 1972, p. 25].

The American Civil Liberties Union estimates the number of convicted draft violators to be over 7,500 during the Vietnam era. Draft violation would include such offenses as failure to notify the draft board of a change of address or failure to register immediately when one reached draft age. The American Civil Liberties Union also states that the Director of the Selective Service System reported in 1973 that in his judgment, in excess of ten percent of the men who became eighteen in the calendar year 1972 did not register. This would mean that there were some 200,000 draft violations in that year alone (Schwarzschild, 1974).

The penalties for violating the draft laws range from a possible prison sentence of up to five years or a fine of not more than \$10,000 or both. This is for each offense for which a person is convicted. Statistics regarding prison sentences for draft offenses indicate that during the late 1960s, the sentences being given were longer than in previous years. The average sentence in 1967 was 32.1 months as compared to an average sentence in 1966 of 25.4 months (Rothenberg, 1968).

## B. Deserters

Unlike draft evaders, deserters have already taken an oath to serve their country. The term is used by the military to refer to those individuals who have been absent without leave for a period of thirty days or more. Actually, no one is legally a deserter until he has been tried and convicted of that offense. Desertion as an offense requires intent of being away without leave and the intent of staying away.

Statistics regarding deserters during the Vietnam era apply only to those persons who have been away without leave for over thirty days, and whose names have been officially dropped from the Unit roll, and who have been classified as deserters. These statistics do not include those persons who left the army and returned within thirty days. Even then the figures for desertion are staggering. From 1965 to 1973, the Pentagon reports 495,689 cases of desertion. "In 1971, the Defense Department reported just short of 100,000 men as deserters [Schwarzschild, 1974, p. 5]." Reports from the Defense Department indicate that some ninety percent of these persons have been returned to military control which would leave some 30,000 men still at large.

If one considers that in 1971 in the Army alone, 79,000 soldiers, or nearly six full divisions (7.3 percent of all Army personnel), deserted, the problem becomes clear. This desertion rate was more than triple the highest rate during the Korean War. It was also much higher than any rate recorded for World



War II, when a greater percentage of U. S. troops were in combat zones and there were no one-year rotations. If it is kept in mind that low-ranking soldiers and those in combat-arms units are most likely to desert (only about one in ten GIs engage in combat), it is evident that in some Army units desertion reached epidemic proportions during the war in Vietnam [Musil, 1973, pp. 2-3].

#### C. Exiles

Exiles are men who are living out of the United States to escape criminal prosecution for some type of draft resistance or desertion. There are an estimated 30,000 to 50,000 American war resisters abroad. The largest portion of exiles are found in Canada with others in France, Sweden and England (Schwarzschild, 1974). These men have spent many years away from families, friends, careers, culture and country. The only way they could return to the United States would be through the offering of amnesty or by way of prosecution with years of punishment in a penal institution.

#### D. Dishonorable Discharge

This group represents some 500,000 GIs who have received discharges for less than honorable conditions. Many of these conditions were not court martial offenses but are administrative decisions imposed by some military command. Because of growing resistance to the war, more and more young men began to voice their resistance and protests to the military authorities. This in itself brought about harsher discipline and repression from the military. These

men came out of the military with less than honorable discharges and sometimes with criminal records. The criminal convictions may not be acts considered criminal by the civilian world. Men with dishonorable discharges face difficulty in getting jobs, furthering their education and receiving veterans' benefits. They are also denied access to veterans' hospitals as well as some federal, state and local civil service jobs. In some professional areas, the men with dishonorable discharges are denied licenses for professional accreditation (Schwarzschild, 1974).

#### E. Civilian Resisters and Protestors

During the Vietnam War there were many young men who were never called up to serve. However, they opposed the war as strongly as did those whose numbers were chosen for induction. Civilians took part in public demonstrations and protests, and many were arrested and charged with acts ranging from disorderly conduct and trespassing to espionage and conspiracy. Many of these protestors are in prisons and should be considered for amnesty as well as the military who deserted or evaded the draft.

### CHAPTER III

#### ARGUMENTS AGAINST AMNESTY

The purpose of this chapter is to state the arguments against amnesty. This will be done by stating each argument in opposition of amnesty and follow the statement with supportive data. It is also the intent to relate the arguments against amnesty to past wars in order to find similarities or differences in the Vietnam era.

The opponents of amnesty feel very strongly that amnesty of any type should not be granted. Those who oppose amnesty are, in many cases, those who have either had a family member in the Armed Services, or have themselves served. This group feels they have a right to express their opposition strongly and openly because they did in fact serve their country in one fashion or another.

There are basically four strong arguments against the granting of amnesty. They are:

1. The political offender has committed an illegal act and should have to stand punishment for committing a crime.
2. To grant amnesty would be to make a mockery out of the military service.
3. To grant amnesty to those who resisted would be to tell those who suffered bodily injury or lost loved ones in the war that their loss was of no benefit.



4. The majority of the people of the United States are opposed to the granting of unconditional amnesty.

ARGUMENT I: The political offender has committed an illegal act and should have to stand punishment for committing a crime.

The adversaries of amnesty address themselves first to those who broke the law by deserting, evading the draft or fleeing into exile. These men broke the law and in doing so committed a criminal act.

The Congress hereby declares that an adequate armed strength must be achieved and maintained to assure the security of this nation. The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with maintenance of an effective national economy [Military Selective Service Act (50 United States Code, sec. 1, appendix 451 as amended September 28, 1971)].

If a person were so morally opposed to the war that he could not serve then there were legal avenues he could take to be exempted from service. These offenders chose to disobey the law; therefore, they should fall under the jurisdiction of the law and face penalty. The law is written for all men and a select few should not be exempted from the law and its punishment simply because they held a different political view than the administration. In summary, amnesty should not be bestowed on those who willfully chose to break the law.

ARGUMENT II: To grant amnesty would be to make a mockery out of the military service.

America's military strength is found in the voluntary joining or conscription of men to supply the numbers needed. Various methods of conscription have been used throughout the United States history which would exempt or eliminate certain categories of men as well as fill the rank of soldiers. Young men who are called upon to serve must fulfill their obligation to the military by becoming submissive to the draft laws to provide the needed strength of the military.

In Mexico every male must, when reaching a given age, give a specified number of years service to the military. It is expected and understood. Since the United States does not make such requirements on all male members of its society, it is then imperative that those whose names are called, come forward to serve. To allow some to say no to the call without attaching some degree of punishment would be to make light of the military and at the same time demoralize those who were submissive.

In 1974 there were some 2.1 million men in active duty in the armed services. To grant the resisters amnesty would be giving preferential treatment to a few. Colonel Phelps Jones of the Veterans of Foreign Wars of the United States says "...it is quite clear to me that they broke the law, ... . I think it would be in their interest and in the

interest of the country to have them face up to American justice [Jones, 1974, p. 245]." The Department of Defense has also taken a stand on the issue of amnesty expressing the belief that amnesty "would set a dangerous precedent and be detrimental to military morale and discipline [New York Times, March 14, 1975]." Secretary of the Army, Howard H. Calloway stated, "... to suggest to people that they may pick and choose those statutes that they will obey or the conditions under which they will obey them can lead only ultimately to anarchy [Calloway, January, 1974]."

A great many of the men who were drafted did not want to disrupt their lives anymore than those who refused to go. They gave up their careers, lives, families, education and other lifetime obligations to defend their country whether they wanted to or not. To these amnesty would mean to tear down the morale of those who served. Morale and discipline are necessities to the well-being of a military power.

The American Legion believes that most draft evaders and deserters consciously decided to refuse to accept their responsibilities as citizens under the law; that they evaded their responsibilities by flouting our laws and legal remedies rather than by going through the available, legal channels of redress; that their actions in declining to obey certain laws distasteful to them is contrary to sound legal and moral standards; and that the obligations of citizenship cannot be applied to some and evaded by others [Geiger, 1972, p. 402].

A Texas citizen was recorded as having said "The nation's safety demands subjugating the individuals wishes to

the needs of the country [Good Housekeeping, 1974, p. 60]." To these and many others, amnesty would be a demoralizing act. This country functions on the principles of conscription in the face of war and to allow those who objected to the war to be forgiven for their acts of disobedience would be saying that America would allow people to choose the wars in which they will fight.

A reader of the Washington Post Newspaper analogized the obedience of one in the military to the story of the loyal Japanese soldier who served his country without question or complaint for thirty years in the Phillipines (Washington Post, 1974). It is not the individual's right to question his service, however, it is his duty to serve his country when called upon and should he fail to do so, he should have to pay the penalty.

They're just a bunch of crybabies ... . They preach civil disobedience and following their own conscience, but when they have to live up to their decisions they can't do it. They were the ones who turned their back on their country. Now they have to live with their decision [Lasner, 1974, p. 29].

In Congressman Bob Poage's newsletter of April 7, 1972, he states that the men who fled the country should definitely be entitled to a fair trial for their violation of the laws of the country and if they are found guilty should pay the penalty, but he strongly opposed "preferred treatment" of the resisters who repudiated America in a time of need.



Exoneration of draft dodgers and deserters would set a precedent that might convince young men, in future emergencies, that they risk little or nothing in ducking their country's call to service. The impact would be dramatic and adverse upon the men in the service who either volunteered or answered the call of duty. Furthermore, our country would be divided, not united by such a policy [Hogan, 1974, p. E1403].

The United States military strength is important and a national security depends on the fact that the military can depend on those whom have been summoned. It is each man's duty to give himself to the needs of his country when called upon and should he morally be opposed to the action, be held responsible for his decision and be willing to live with the consequences. The law was made for all and to grant amnesty to a few would be to exhibit elitism.

ARGUMENT III: To grant amnesty to those who resisted would be to tell those who suffered bodily injury or lost loved ones in the war that their loss was of no benefit.

Regardless of the reasons that Vietnam took place, there were lives lost, prisoners taken and irreparable bodily injury to thousands of young men. There are 56,234 known dead Americans; 1,300 men missing in action; 566 prisoners of war returned and 303,000 wounded and 150,000 of these were severely wounded (Jones, 1974). Whatever the reasons there were for one refusing to serve or continue service to American armed forces, there were some 56,000 men giving their lives for their country while the others were safely living in Sweden or Canada.

None of these men who left the country to avoid their military obligation will be marked by the scars of battle for the rest of their lives. None of their wives is a war widow.

What those who have fled the country now seek is not amnesty or forgiveness. They seek vindication, approval by the United States Government, that they were right and the U. S. wrong. To grant what these few thousand deserters demand would be to dishonor those millions who served their country with honor [Hogan, 1974, p. E1403].

For every man who deserted or evaded the draft there was another called to fill his place and possibly he gave his life for someone who was basking in the sun in a foreign country.

Some opposing amnesty are parents of men who lost their lives in the war.

We are tired of reading about these grieving parents who are within corresponding and traveling distances of their so-called American sons . . . . Many paid the supreme sacrifice and still more came home disabled also to grieving parents. . . . if this grievance by parents of resisters is so unbearable then please do us a favor and all of the true Americans a favor and take the next plane to your son and stay there [St. Louis, 1974].

An official of the Non-Commissioned Officers Association said it is a moral issue and that to grant amnesty to those who refused to serve would be to "slap in the face" the millions of men who were serving in the war and who either lost their lives or were wounded or maimed in a bloody, unpopular war. He states that God commanded us to forgive our trespasses but he didn't mention a thing about amnesty (New York Times, 1974). War does not diminish the importance of life; it merely calls for individuals to take

a position in defending a nation. For some to resist the call to protect and defend their country's commitments while others give their lives does not seem equitable.

ARGUMENT IV: The majority of the people of the United States are opposed to the granting of unconditional amnesty.

Gallup Polls were taken yearly from 1972 thru 1974 concerning opinions on amnesty. The question was first asked in 1972 of a representative cross-section of the voting age population. The question was one regarding avoidance of the draft and allowing the return of those individuals without punishment. Out of a total of 1554 polled, sixty percent opposed amnesty without punishment. The same question was asked in 1973 and 1974 with results varying little. There were some that favored a type of clemency that would allow resisters to return to the country if they would earn re-entry by means of alternative service. Americans polled were not totally unforgiving because 63 percent favored amnesty with service requirements (Washington Post, 1973). There is apparently some conflict however with the principle of equality of service. Americans, in time of war, are more unsympathetic to unconditional amnesty for the men who resisted the war and feel strongly that service in such areas as schools, hospitals, prisons or even the military be mandatory for re-entry (New York Post, 1974).

To grant amnesty would be to chip away at the foundation of America. Young children are deliberately taught

## CHAPTER IV

### ARGUMENTS FOR AMNESTY

After reviewing the arguments against amnesty it is imperative that the arguments for amnesty be considered. The number of organizations that are in support of unconditional amnesty are many. There are also numerous arguments for the granting of amnesty. Seven of these arguments will be considered in this chapter including:

1. To unite the citizenry
2. To allow the United States to make use of her exiles
3. To honor the feelings of the Gold Star Parents for Amnesty
4. To allow Americans the right of disapproval on immoral grounds
5. To recognize that the Vietnam War may have been illegal
6. To honor religious views
7. To accept that man reacts out of moral conscience

#### ARGUMENT I: To unite the citizenry

First, there is the view that amnesty would unite a country torn apart by varying opinions of the war. Henry Steel Commager, before a Senate Subcommittee, stated that the true task of America was not to simply end the conflict in Asia. It was much more than that. The task of Americans



was to heal the deep wounds made in the hearts and minds of people by the Vietnam War. The country has been torn apart by the war. Commager goes on to state that a vindictive approach to the problem will never repair the damage. It is time to forget about judging others and strive to bind all wounds (Commager, 1972). Amnesty would be a symbol of wanting to live in peace and putting an end to the division among ourselves placed there by the war.

... We would be saying to ourselves that we now put the Vietnam War behind us, with its terrible freight of bitterness and recrimination, and of corruption and brutality too. We would signal a decisive turning away from the darkness of the war years, and toward rebuilding and restoring and healing, both here and, as we are morally bound to do, in Indo-China. We also would be affirming to ourselves that America has no time or need vengeance against ourselves, and especially not against our youth. We would, instead, be welcoming the return, as free members of a freer society, of young men who can give much to the future ... theirs and ours and our country's [Schanzschild, 1974, p. 10].

The President himself realized that amnesty would be a form of reconciliation and "an act of mercy to bind the nation's wounds and to heal the scars of divisiveness [Temple Daily, 1974, p. 1]."

Robert Brown, a professor of religion at Stanford University states that it is time we gave up the idea of punishing those for taking a stand against the war. What would be gained? To continue a vendetta against these young people not only destroys them, but the country as well. "It is time to put the issue of their guilt or innocence aside and get on with new tasks ... [Brown, 1973, p. 6]."

To many, amnesty appears to be the answer for uniting the country and bringing Americans together for a common purpose--that of turning from the past and looking toward the future. Ramsey Clark, former Attorney General of the United States, states:

Amnesty will bring us together. If we do not grant it, thousands of American families will live out their lives separated from their sons. Emotionally and physically, mothers, fathers, brothers, sisters, relatives and friends will be unable to live together. Beyond this, whole segments of our society will suffocate in the anguish of the past that cannot be overcome until we put it behind us, by forgetting the violations that divide us. Then hundreds of thousands can come out into the light, breathe the air freely and participate fully in an open society. ... We must act from reason ... . Then too, in the midst of this Slough of Despond, where wars and Watergate have mired us down, to restore our faith we desperately need to do something decent for a change. Amnesty is a decent thing to do [Clark, 1973, p. 2-A].

ARGUMENT II: To allow the United States to make use of her exiles

A second argument for amnesty is that many of our young men who are living in other countries or living underground are intelligent, creative young men; and our country is losing the benefit of these men by forcing them out of the country because of the existing punishment. It is ironic to note that many of our forefathers came to America for the purpose of fleeing European conscription while during the Vietnam War American young men fled to Canada and European countries for the same reason. Those who left the country will have to face the threat of prosecution

should they return at anytime. If they renounced their citizenship it is doubtful that they can ever reclaim it in future years (Rothenberg, 1968). Their lives will permanently be disrupted because of felony convictions that result in imprisonment. Because of the felony convictions, they will be denied voting privileges in some states, election to public office and admission to certain professions thereby robbing America of her natural human resources.

ARGUMENT III: To honor the feelings of the Gold Star Parents for Amnesty

A third reason to support the view of amnesty is that many of the veterans of the war are not opposed to amnesty and some families of men who lost their lives in the war support amnesty and have testified before Congress and the public favoring amnesty. Gold Star Parents for Amnesty is the name of an organization consisting of parents whose sons were killed in the Vietnam War. This organization wholeheartedly supports the view of unconditional universal amnesty. The purpose of the organization is to educate the people of America in the subject of amnesty. Mrs. Patricia A. Simon, Coordinator writes the following letter:

Gold Star Parents for Amnesty is a new organization. We know that there are people in our country who feel hostile toward the young men who felt they could not participate in the Indochina War. We don't feel that way. In fact we think it is time to welcome them home.

Many, like our sons, went into military service. Others chose to leave the country or to go to jail. Each man followed his conscience, and all of us--veterans, resisters, parents--are victims of a policy that had tragic consequences.



We would like other Americans to know that we do not want the continued punishment of hundreds of thousands of our young men. Gold Star Parents for Amnesty feel that a universal unconditional amnesty would be a living memorial to all the young dead soldiers who leave us the task of giving meaning to their deaths [See Appendix C].

In a personal note to the author, Mrs. Simon writes, "It is cruel to continue to punish the people who had to make a decision about the war because their lives were on the line [Appendix C]!"

Mrs. Louise Ransom, whose son Mike was killed in My Lai, expresses her family's feelings of amnesty this way:

How are we parents, conscious of our American heritage--founded in dissent and dedicated to freedom--to raise our children to be proud of their country in such a climate? Have we not placed in jeopardy the very birthright of their whole generation of life, liberty, and the pursuit of happiness?

How can I help my five remaining sons to find some positive meaning in the death of their brother?

My husband and I have long faced the difficult truth that there was no gain for this country from our son's death. His life was wasted by his own government and nothing we do can alter that [Ransom, 1974, p. 1].

The Ransoms have spent years speaking throughout the country. Senator Edward M. Kennedy asked them to testify before a Congressional hearing in Washington. Mrs. Ransom was a member of the Committee of Liason with Families of Prisoners Detained in North Vietnam and became actively involved in Gold Star Parents for Amnesty. The Ransoms have appeared both on television and radio including the well known program "The Advocates." They felt that Congress, the people and the news media would listen closer



to those whose lives were directly affected by the war, so they put all of their energies into the campaign for amnesty. Mr. Ransom concluded his testimony at the Kennedy hearings with the following statement:

... the untenable position into which we forced these young men is responsible for their predicament today. These are our sons, and we need them back. They did not deserve what we have done to them. It would be most gratifying to me if I felt that I could have contributed in any small measure toward the granting of the broadest kind of amnesty--one without penalties and conditions. I would consider it to be my personal Mike Ransom Memorial Amnesty Bill. That would have pleased him [Ransom, 1974, p. 7].

Finally, Mrs. Valerie M. Kushner, wife of a Vietnam veteran who was also a Prisoner of War for four years, called for the government to offer a plan for amnesty that would not seek to punish but "have as its guide compassion [Goodman, 1973, p. 81]."

ARGUMENT IV: To allow Americans the right of disapproval on immoral grounds

A fourth reason for granting amnesty to the protestors of the Vietnam War is that many of the men who went into exile or deserted during the war did so because they felt the war was immoral and their actions were one way to voice their disapproval of the war.

Literally thousands of the men who objected to the war had already spent time serving their country in the military and many of them had served tours of duty in Vietnam. One such case is John David Herndon.

Herndon's case is not an unusual one. He enlisted in the army and in 1966 was sent to Vietnam for his first tour of duty. "When I first went over, I was stupid ... . As the military teaches you, I was there to stop the flow of Communism in Southeast Asia [Reston, 1973, p. 11]."

Herndon fought in the war as he was told to do. He was a good soldier and followed military orders. In October of 1967 Herndon got his first taste of military trouble when he was charged with being AWOL and shooting a Vietnamese girl. The charges were dropped because of lack of evidence.

After fourteen months of duty, Herndon was going home. While at the airport, he was in an attack that kept him in Vietnam for another six days and also left him wounded.

In a hospital outside Bien Hoa, Herndon was presented with the Army Commendation Medal which read:

Through his untiring efforts and professional ability during a coordinated Viet Cong attack throughout the city of Saigon, Republic of Vietnam, he consistently volunteered his services and contributed to the outstanding manner in which the United States Army headquarters Area Command was able to accomplish its mission. Despite sniper fire, mortar, and B-40 rocket rounds, he assisted materially in the feeding, housing, resupply and maintenance of security for more than 35,000 American military and civilian personnel stationed in the city of Saigon.

His commendable performance and devotion to duty have been in the highest tradition of the United States Army and reflect great credit upon himself, his unit, and the United States Army [Reston, 1973, p. 19].

After recovery, Herndon was sent home for a short stay only to receive orders in December of 1968 to go to Germany. He stayed for six months and then deserted for good. He did so after hearing from "a friend in personnel" that he was to go to Vietnam for another tour of duty. Herndon knew he would never go again.

After spending a certain amount of time in Vietnam, you know how things are run there. You wish not to go back, that's it. You don't like the way things are going. When they told me I was going back, the first thought that entered my mind was "Oh, no I'm not."

Why did that thought enter my mind? It wasn't because I thought I was going to get killed over there, because I'd already been in combat. I wasn't worried about that. I would have gone back to Vietnam--voluntary--if there was some way I could help the people without killing the people. And seeing that there was no way I could help them without killing them, not in this way anyhow, why should I go back?

So when they said you're going back, I said to myself, "Oh, I have a choice now. I can either go to Vietnam or I can go some place else [Reston, 1973, p. 24]."

John David Herndon came back to the United States to go before the military officials for desertion and was released because the "army found it inconvenient to prosecute him (Reston, 1973)."

Army medic Eddie Sowders was another young man who deserted the Army after having volunteered for a second tour of duty in Vietnam. He was assigned to an evacuation hospital and many of the victims he treated were Vietnamese civilians, mostly women and children. Sowders recalls that many of those wounded were actually victims of United States artillery and bombing. "I watched many of them die from



their terrible wounds; we 'saved' others--to be crippled or maimed for the rest of their lives (Schardt, 1973)." In June 1973, Eddie Sowders was quoted as saying

For the past three years, except for a period in Canada, I've lived underground in America, cut off from my family and friends. It has meant drifting from one low-paying job to another, often going without food or shelter. Like thousands of AWOLs before me, I'll be court-martialed by a jury composed of career officers, sentenced to a military prison and finally, returned to civilian life with a bad discharge to insure that their punishment extends into the rest of my life ... [Schardt, 1973, p. 26].

Captain Michael Heck, once of the Air Force was another who found it impossible to continue serving in the war even though he had flown 262 combat missions in Indochina. Heck, who holds the Distinguished Flying Cross and eleven air medals, decided suddenly that "goals do not justify the mass destruction and killing." Captain Heck refused to be reassigned to anymore combat in Indochina even if it meant he would be sent to jail. "I can live with prison, easier than I can with taking part in the war (AB-52, 1973)."

These were not men who refused to serve in the war; they were, in fact, men who not only had served but had received awards for their contribution to the war. They, after having seen wanton killing and bombing, decided to resist the war by refusing to serve anymore.

In order to oppose the war and be recognized in opposition, it meant having to openly refuse service or



take part in some form of demonstration. The law of the land is clearly stated, and punishment follows the breaking of the law. There were, however, those who felt their moral obligation was far superior to their legal obligation. The moral hero not only speaks for himself but others too. He demands justice, peace and life itself for everyone. "The peace militant of the 1960s burned his draft card or raided a Selective Service Office in the name of the people of Vietnam as well as of all Americans called on to fight there [Bannon, 1974, p. 5]." His criminal deed was not one for the purpose of sensitizing individuals, but it was to change government policy. The legal system in America did not see the point this way and was quick to say that breaking the law out of high moral purpose is not a defense (Bannon, 1974).

There were several men--young and old--who had to pay the price for morally opposing the war. A few such cases follow.

June 7, 1966, found three young men stationed at Ft. Hood, Texas, and about to receive orders for duty in Vietnam. They were each given leave before having to report for duty. During their leave, the three announced at a press conference that they had made their decisions and were not going to Vietnam. "We will not be a part of this unjust, immoral, and illegal war. We want no part of a war of

extermination. We oppose the criminal waste of American lives and resources [Bannon, 1974, p. 64]."

During the trial of the three men, the following remarks were made by one of the defendants:

I believe to act contrary to what you know is right is to die a little ... whenever the cop on the corner would tell us we had to keep our place, keep within our boundaries at that time I told them, no. The fact that you reaffirm what you believe you cannot back-track. If a man is without a moral code he is like the sea without water. That is the only way I know how to act [Bannon, 1974, p. 74].

Two of the young men were sentenced to five years in prison while one was to be "dishonorably discharged from the service, to forfeit all pay and allowances, and to be confined at hard labor for three years [Bannon, 1974, p. 75]."

The cases were appealed and the result was a lowering of the five year prison term to three at hard labor for all three offenders (Bannon, 1974).

A second case is one concerning draft-card burning. On October 15, 1965 David Miller became the first person to be indicted for mutilation of his draft card. He burned the card in front of an induction center in New York City.

During David's junior and senior college years, he became disturbed about the war and conscription. He became known as a pacifist. His personal comments were

I would not kill anyone under any circumstances. I would resist evil and injustice non-violently, and while engaging in non-violent resistance, I would use no means that I thought might harm my opponent, physically or mentally.

I came to this position via a personal religious development during college and via the civil rights movement that I took part in while in college. The ideology and non-violent tactics of the civil rights movement appealed to me. I joined Syracuse Core, participated in a number of demonstrations and was arrested in two demonstrations [Bannon, 1974, p. 42.]

David's draft-card burning brought him a conviction and sentencing. His case was appealed several times and each time the case seemed to be more puzzling to the legal system. At one point, Miller was even asked to register as a conscientious objector, which he refused to do. Miller was morally opposed to the war--he was not just looking for escape routes. Attempts were made to keep from punishing Miller; however, in the final analysis Judge Tyler said, "I must conclude under all circumstances that there must be rendered unto Caesar what Caesar must have in these circumstances [Bannon, 1974, p. 62]." Miller then replied that he would never and the judge sentenced him to Allenwood Prison (Bannon, 1974).

There are many other such cases that could be cited for feeling the war was immoral but there are yet other reasons for granting unconditional amnesty.

ARGUMENT V: To recognize that the Vietnam War may have been illegal

A fifth reason for granting amnesty is that many people support the position that the war in Vietnam was illegal. Should this be the case, those who resisted the war were resisting an illegal war and draft.

America became interested in Indochina as early as 1944 when President Roosevelt stated that France had "milked dry" Indochina for over one hundred years and the people of Indochina were entitled to something better (Fulbright, 1966). Following the invasion of South Korea the people of the United States became increasingly aware of Communism as a threat to the Free World. This "scare" became known as the McCarthy hysteria. Under these circumstances, the United States began to assist the French in Indochina at the end of 1950. In 1951 the United States signed an agreement for direct economic assistance to Vietnam and later in 1954 the United States became obligated to Vietnam militarily through the SEATO agreement. The Geneva Agreement was signed in July, 1954 and from then on, through a series of small steps, the United States gradually took over the French commitment in Vietnam.

By February of 1962, the number of military personnel in South Vietnam had reached four thousand. It became increasingly apparent to American leaders that necessary measures would have to prevent a communist victory in South Vietnam (Fulbright, 1966).

The legal basis for the war had its inception on August 2, 1964. An American destroyer was attacked by North Vietnamese torpedo boats in international waters. On August 4, 1964, the Gulf of Tonkin Resolution was made giving the President the authority "to take all necessary



measures to repel any armed attack against the forces of the United States ... [112 Cong. Rec. 1841].

A question has since been raised by Congressmen who state that this Resolution was not a declaration of war. These Congressmen emphasized that the Resolution was not to escalate the war. For many Congressmen, the Resolution was intended to avoid full-scale war. "Senator Fulbright admitted that the language of the Resolution would not prevent the President from escalating the war, but he clearly indicated that this was not the Congressional intent [The Vietnam War, 1969, p. 676]." Some Congressmen now support the concept that the Resolution was secured by means of deception. The deception would have been made during the reporting of the Tonkin incident (The Vietnam War, 1969).

If the war were a mistake and illegal, the men who first opposed the war should be amnestied. The proponents of this view state that the draft and war itself was an invasion of their rights. The government failed to show that a national emergency existed and that our Congress never declared war, which is required by the Constitution. Those who resisted the war were actually resisting an illegal war and draft. It is possible that the future may disclose the unconstitutionality of the war.

If and when the day finally comes when the courts find the Vietnam war unconstitutional, that decision may well settle the question of amnesty for everyone suffering legal consequences from an illegal war [Schardt, 1973, p. 25].

## ARGUMENT VI: To honor religious views

A sixth reason for amnesty is religious. Amnesty is an issue focusing upon individual values. If it is not a personal concern, then it probably means that amnesty does not touch on one's values. A reason many people in the United States cannot come to grips with the issue is there are conflicting values. On the one hand there is the patriotic view of supporting of one's country in time of war. On the other, is the view of moral grace and forgiveness. A large segment of the population support unconditional amnesty on the premise that it is the Christian action to take; mercy toward an individual requires that amnesty be declared. Charles Lutz states that the Biblical idea of grace is essential. What must be done in the United States is to show ourselves as compassionate people who can forgive past experiences and differences (Lutz, 1974). He says, "Both the law and the nation can be merciful ... . Law should not be used for purely punitive purposes [Lutz, 1974, p. 905]."

The Interreligious Task Force on Amnesty calls attention to the scriptures which support reconciliation of man to man, to the fact that the government's judgment is not always justified simply because it is law (See Appendix D).

Martin Luther spoke of the two realms in which the Christian always lives.

One realm is guided by the principle of law or human justice, the other by the principle of grace. So long as there is evil, human beings in their earthly order will need to operate with the principle of law. But wherever possible, and when it will not do great harm to the common good, Christians are to go about infusing the realm of law with the balm of grace [Lutz, 1974, p. 905].

In the last five years churches around the country have strongly supported the position of unconditional amnesty. In Appendix D the views of the organization Clergy And Laity Concerned are expressed. This testimony was given before the House Committee on the Judiciary, March 8, 1974. Other religious denominations have formally expressed support of unconditional amnesty. In Appendix D are the convictions of the American Baptist, American Friends Service Committee, Interreligious Conference on Amnesty and the Roman Catholic Conference of Major Superiors of Men U. S. A. Each one of these groups steps out into the political world to further the cause for peace and the healing of a nation's wounds. "It would be bitterly ironic were we to make peace with peoples of China and Southeast Asia but persist in vindictiveness toward those of the young generation ... [Religious statements, 1974, p. 14]."

ARGUMENT VII: To accept that man reacts out of moral conscience

The final argument for amnesty makes use of the principles established at the Nuremberg trials. The principle states that an individual may be held personally

responsible for crimes against humanity which he commits in response to orders given by superiors of the state (Schardt, 1973). The deserters of the Vietnam War argue that the acts of violence in the war were crimes against humanity and this was justification for their failure to continue to serve in the war. They also feel that there should not be any punishment attached for their acts of disobedience (Schardt, 1973).

This principle had its origin immediately after World War I when the British Imperial War Cabinet decided to punish German leaders by legal tribunals rather than by executive action. The judicial experts decided that the accused could not be brought before any legal tribunal because their only guilt was that of moral responsibility. Because of this conclusion, the kaiser was the only one indicted for starting the war. All of the planning of the Allies was of naught because on November 19, 1918, the kaiser fled to Holland. Interests in the post war punishment soon decreased.

Following World War II another tribunal was formed to try twenty-four Nazi leaders. The famous Nuremberg trials started November 10, 1945 and ended August 31, 1946. These men were charged with war atrocities committed in response to higher orders. The fate of these leaders was death by hanging, suicide, imprisonment and acquittal for three of the men.



During these trials the war took on a moralistic-legalistic look (Bosch, 1970). Moralistically, the trials brought out that not only does the victor receive the spoils of the war but that those defeated can be held responsible for their actions during the war. Legalistically, the German leaders were following the orders of their superiors when they committed the atrocious acts for which they were being tried. During the Nuremberg trials it was established that regardless of orders to commit heinous war crimes, man's conscience should have dictated a moral responsibility to mankind.

#### SUMMARY

As in the Nuremberg trials, the United States' involvement in Vietnam has taken on a moralistic-legalistic look. The literature indicates that the major objections to the war have been moral and legalistic. Throughout the history of the United States there have been objectors of war. Most objectors, in past wars, based their objections on religious grounds. The Jehovah's Witness, for example, strongly protested the draft conscription during World War I and were instrumental in seeking amnesty for the conscientious objectors.

The nature of the objectors of the Vietnam War were somewhat different from the objectors just mentioned. Their objections were humanistic rather than religious. The moral objectors of the war saw humanitarian needs of the country

as being of greater importance than a political war. The objection was not killing but to misdirected priorities. The problems at home were more important than foreign problems.

To some Americans the specific pros of amnesty are not the most important issues on the subject; the issue is simply to forgive and forget--not the "whys" to forgive and forget. There is a need to get on with the problems that face the nation. There is a call to unite, bring families together and look forward to a bright future, employing all human potential available. This would mean bringing some half million men home and return them to active participation in society.

## CHAPTER V

### CONCLUSION

The question of amnesty is not one to be resolved easily. Ethics, morals, values and emotions are all non-measurable variables that constitute the problem of amnesty.

The fact that a precedent for amnesty has yet to be set clouds the issue further. Although there have been specific acts of clemency at specific times, history has not set a clear precedent to follow. Therefore each administration has acted in the manner it has deemed necessary. The question of the power or authority of the President has never been resolved satisfactorily. Each President has acted on the concept that he has the power regardless of whether or not he has the authority.

After a thorough research of the problem of amnesty, it is this writer's conclusion that the only fair and just resolution of the conflict is to grant unconditional amnesty for the Vietnam resisters. In support of this conclusion, the arguments against amnesty are listed and refuted.

ARGUMENT I: The political offender has committed an illegal act.

Among the purposes of punishment is deterrence. Punishing resisters of the war who acted out of moral

conscience serves no purpose. Punishment as a deterrent would mean that the next time the United States was involved in a war everyone would serve willingly because they had been punished before or because examples were made of the Vietnam resisters. Each war has its unique problems and each person has to deal with his own conscience concerning that war. Therefore punishment for one war would not be a deterrent for another.

Donald R. Taft, when reviewing the punishment assessed for the Nuremberg trials, cited major principles of punishment in the case of the resisters of the Vietnam War.

1. Punishment is ineffective when the potential offender feels that the one punishing is in fact criminal. [During the war, the resisters expressed openly their feelings of the United States being the aggressor. They referred to the government as a political machinery caring very little about the individuals who were fighting the war. The United States was also negligent in its handling of the Gulf of Tonkin incident, as stated in Chapter IV. This raised the question as to the legality of the Vietnam War. The resisters viewed the escalation of the war, without Congressional approval, as a criminal act. The United States became the aggressor in an unpopular and possibly unconstitutional war].



2. Punishment will probably be administered by someone other than the peers of the punished. [The government dictates the punishment while the majority of those in government were not called to serve in Vietnam. The peers of the resisters of the war have nothing to do with the punishment given the resisters].

3. Punishment is ineffective when the pains of it are less than the social approval brought on by the criminal act. [Thousands of people and many organizations wholeheartedly supported the resisters of the Vietnam War. Approval of this nature gave added incentive for young men to resist military service. There were marches of protest, sit-ins, campus rallies, as well as other visible evidence of disapproval of the war. College young people attacked the administration for not ending the war in Vietnam. The news media made public the unrest of the country over the Vietnam War].

4. Punishment is ineffective when similar acts escape punishment. [Some legally resisted the war. Jobs that carried draft exemptions, medical excuses, school deferments and conscientious objectors were legal means for avoiding military service. For these legal means there was no punishment attached. Similar acts of illegal resistance were not treated equally by the courts. Punishment varied from dismissal of the case to three to five years at hard labor. (Bannon, 1974)]

5. In order for the punishment to be effective, it should be accepted by former enemies and supporters as being just punishment. [There were thousands of young men who served their country who felt that those men who resisted did so out of moral conscience and that they should not be punished. Organizations such as Winter Soldier Organization, Vietnam Veteran's Against the War and Gold Star Parents primarily have membership of those who were directly involved in the war. The American Civil Liberties Union and Amnesty International have working for them young men who served during the Vietnam War].

6. Punishment is ineffective when those who are being punished are supported by a "gang". Taft refers to the society as constituting a gang. [The country has been divided because of the Vietnam War. This war was one of the most unpopular, if not the most unpopular, war in America's history. Those who resisted the war had strong moral support from a large segment of the American population. There were underground groups that would help the draft resisters leave the country and there were contacts in foreign countries which would give deserters housing and food as well as protection (Reston, Jr., 1973)].

7. Punishment in itself does not change anti-social behavior to social. [Punishing the men who resisted an unpopular war serves no purpose. In this case, punishment

could deepen the bitterness already felt by many American citizens for having been involved in Vietnam].

8. Punishment is not effective when it expresses the hatred of the punisher. [Getting even with those who resisted is not a reason for punishment. It only eases the conscience of the ones punishing. As for the men who served who might feel anger toward those who refused to serve, the passing of time will cause them to forget. A young black veteran in Temple, Texas, lost both legs in the war. When asked what his feelings of amnesty were, he replied he did not care one way or the other. He had no feelings. He was only glad the war was over. For those men who are confined or permanently exiled, they will never forget].

9. Lastly, the punishment of war criminals is ineffective because it is moralistic rather than scientific. Moralistic guilt is determined by punishing the guilty party without determining the reasons behind the guilt. [The punishment is being given to the result and not to the cause. In war, soldiers are expected to carry out orders without question. To resist orders or question their validity is an act of insubordination and punishable by military law]. (Bosch, 1970)

Punishment should be coupled with modification of behavior to be effective. The human mind will always make a value judgment on moral issues and punishment will have

very little effect on his decision. It would be better to forgive and forget (amnesty) the past and bind wounds and heal a nation's ills than become vindictive over past moral issues and risk alienating a large portion of a country's population. Amnesty would help in this healing.

ARGUMENT II: To grant amnesty would be to make a mockery out of the military service.

The weakness of this argument is seen in the history of amnesties. As was stated in Chapter I, every major nation, at sometime in its history, has granted amnesty and yet the military has always survived. United States history strongly points out the fallacy of the argument. Following the Civil War, in which amnesties were granted, men fought in the Spanish-American War. The United States did not suffer from lack of man-power. World War I was fought and won by men who had a sense of obligation to their country. There were amnesties granted to resisters of that war some years later. The United States did not lack in man or woman-power in World War II because of a strong sense of nationalism and patriotism. Amnesty was also considered on a case by case basis following the Second World War. American men were called on again to fight in Korea for the purpose of stopping the advancement of Communism in that country. Men went, and fought, and accomplished much of the intent of the United States.



Young men supported the Vietnam War in the beginning. The demoralization and mockery of the military came several years after the country's involvement in Vietnam. The government and the military made a mockery of themselves by failing to show the American people the need for escalating the war.

Historically, men who fought wars did so for the preservation of their country. Regardless of the number of amnesties granted in the past, the military has always had enough men to fight when there is justification and when security is endangered.

If the military in America has or will be made a mockery, it will not be the result of amnesty. The mockery will come from the military itself for failing to show the American people just cause for playing political games with American men's lives.

ARGUMENT III: To grant amnesty to those who resisted would be to tell those men who suffered bodily injury or lost loved ones in the war that their loss was of no benefit.

This argument can be explained away by pointing out that two years following the end of America's involvement in South Vietnam, the South Vietnamese government was taken by the Communists in spite of the 55,000 lives lost to save it. It appears that the only thing America did in South Vietnam was to prolong the inevitable. The price of this inevitable event was 55,000 lives. One wrong does not justify another.

If the Vietnam War was morally wrong and a tactical blunder from the start, then one can certainly sympathize with those who lost loved ones in the war. By the same token sympathy should also be extended to those who had the discernment to know that the mistake existed. The war itself cannot be corrected but the manner of dealing with the resisters can be rectified.

The United States has very little to show for the vast amount of human life, money and energy expended in South Vietnam. Amnesty could not destroy or damage the morale of those who served anymore than the feelings of defeat.

ARGUMENT IV: The majority of the people in the United States are opposed to the granting of unconditional amnesty.

Gallup Polls taken between the years 1972 and 1974 indicated that a majority of the people of the United States opposed unconditional amnesty. This same group, however, was in favor of a conditional re-entry into the United States.

On September 12, 1974 President Ford granted a conditional amnesty for war resisters. The period of time in which resisters could file for the amnesty ended March 1, 1975. This deadline had been extended twice. As of this date, approximately 23,000 men took the opportunity out of some 117,000 men who were eligible.

For many who were exiled, Mr. Ford's Amnesty Proclamation was not enough. Colhoun, a teacher at Toronto's York University, states, "I'd like to go back to the U. S., but this amnesty has not answered a lot of questions. It has too many traps [Houston Post, 1974, p. 2BB]." Some of the men viewed the amnesty offer as an insult since they had already paid the price of spending several years out of the country, separated from their families. To some resisters, conditional amnesty suggested an admission of guilt.

American's opposition to amnesty in 1974 was not uniquely different from the opposition to amnesty following the Civil War. In both cases there were strong feelings of loyalty to one's country and should one choose not to support the government, one should be punished. Lincoln and Johnson recognized a far greater advantage for the United States in the granting of amnesty than the imposition of punishment. The advantage was to bring the country together by forgiving and forgetting the past and working toward the future.

Many of the citizens of the United States are opposed to amnesty because they are uninformed about the problem. Unless an individual has a particular interest in the subject of amnesty or a personal interest due to the involvement of a family member, it is unlikely that he would inform himself on the subject. One of the major

purposes of The Gold Star Parents For Amnesty is to inform the public of amnesty.

The granting of amnesty may not be a popular subject among many American people but if history repeats itself, it will be granted. Generally, amnesties have not been granted immediately after a war. For some, amnesty may come as late as one hundred years after their death as did the amnesty of Robert E. Lee. These years of waiting sooth the emotions of the public as well as prepare the public to accept the amnesty but it has wasted productive years of the resister.

The public may be opposed to unconditional amnesty but that does not mean it should not be granted. The fact that the conditional amnesty program has not been successful is partially due to the resister's strong moral stand. Accepting conditional amnesty would be an admission of guilt. The resisters do not feel that they were wrong. An unconditional amnesty is the only right decision to help heal the scars of Vietnam. The issue of amnesty is a legal and moral issue not mainly a political issue.

To take a stand for unconditional amnesty requires that more valid reasons be given in support of that opinion.

In the first place, Vietnam was lost to the Communists in 1975 in spite of the lives lost to save it. Refugees and orphans from Vietnam have been brought to the United States and the American people will bear the burden



of the care of them. The United States has opened her doors to political exiles from the beginning. She has also given money to help rebuild damaged countries destroyed by war. It was the United States' money that helped rebuild the very countries she had destroyed in the war. War prisoners in Germany were ordered released on November 21, 1946 (New York Times, November 24, 1946). If the United States can be compassionate for others, even her enemies, she can surely show compassion for her own.

Secondly, unconditional amnesty would be one immediate step taken toward rebuilding American patriotism and morale. It should be given those who resisted the war as conscientious objectors, draft evaders, deserters, and political criminals who were convicted of speaking against the war or opposing the war by such means as draft card burning. The only exception to this should be the individuals who committed acts which would be deemed criminal by civil society. These cases should be tried on a case by case basis as they would for any crime committed in the civil world. There will be some resisters who will reject amnesty because they reject nationalism. They feel that the Vietnam War was wrong and that the Army is brutal both to its own as well as its enemies. They do not want to live in the United States anymore. For these few amnesty would be of no value, but for the other thousands, amnesty would mean a life again with family and friends.

Thirdly, thousands of young men have either been using their talents and abilities to help other countries or have found their potential abilities wasted. The United States should and can use these talented young men in her service. Many of the men who resisted the war must have genuinely cared for their country to be so opposed to the United States' involvement. Apathetical people never become involved nor do they work for change. This human potential is being wasted due to exile or the forced underground living of the resisters.

Finally, the bitter feelings concerning the Vietnam War need to be laid aside. For a nation to be strong it must be unified. Abraham Lincoln, in a speech made in 1858, stated "A house divided against itself cannot stand." The issue of amnesty has caused a division in the United States. There is more to law than vindictiveness; there is fairness, compassion and the knowledge that those who make and interpret the law may have made a mistake with the Vietnam War. This view of the legal system needs to be admitted and dealt with. Unconditional amnesty would be a major move toward unification of a divided country.

Society has obligations to and functions for all its members and not just to the military. It is a miscarriage of justice to permit one decision or act related to the military, to destroy the rest of one's civil life. It is

time the United States put her hand to the tasks that lie ahead and use the past only to learn from her mistakes. It is time to use the mistakes of the past to mold the future. It is time for unconditional amnesty to be granted.

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APPENDIX A  
AMNESTY PROCLAMATIONS

PROCLAMATION OF AMNESTY AND RECONSTRUCTION

December 8, 1863

By the President of the United States of America:

A Proclamation.

Whereas, in and by the Constitution of the United States, it is provided that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment;" and

Whereas a rebellion now exists whereby the loyal State governments of several States have for a long time been subverted, and many persons have committed and are now guilty of treason against the United States; and

Whereas, with reference to said rebellion and treason, laws have been enacted by Congress declaring forfeitures and confiscation of property and liberation of slaves, all upon terms and conditions therein stated, and also declaring that the President was thereby authorized at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem expedient for the public welfare; and

Whereas the congressional declaration for limited and conditional pardon accords with well-established judicial exposition of the pardoning power; and

Whereas, with reference to said rebellion, the President of the United States has issued several proclamations,

Whereas it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States, and to reinaugurate loyal State governments within and for their respective States; therefore,

I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that with restoration of all rights of property, except as to slaves, and in property cases where rights of third parties shall have intervened, and upon the condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

.....

The persons excepted from the benefits of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called confederate

government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called confederate government above the rank of colonel in the army, or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the army or navy of the United States, and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons or white persons, in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service, as soldiers, seamen, or in any other capacity.

And I do further proclaim, declare, and make known, that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina, a number of persons, not less than one-tenth in number of the votes cast in such State at the Presidential election of the year of our Lord one thousand eight hundred and sixty, each having taken the oath aforesaid and not having since violated it, and being a qualified voter by the election law of the State existing immediately before the so-called act of secession, and excluding all others, shall re-establish a State government which shall be republican, and in no wise contravening said oath, such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that "The United States shall guaranty to every State in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or the executive, (when the legislature cannot be convened,) against domestic violence."

And I do further proclaim, declare, and make known that any provision which may be adopted by such State government in relation to the freed people of such State, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition as a laboring, landless, and homeless class, will not be objected to by the national Executive. And it is suggested as not improper, that, in constructing a loyal State government in any State, the name of the State, the boundary, the subdivisions, the constitution, and the general code of laws, as before the rebellion, be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions, and which may be deemed expedient by those framing the new State government.

To avoid misunderstanding, it may be proper to say that this proclamation, so far as it relates to State governments, has no reference to States wherein loyal State governments have all the while been maintained. And for the same reason, it may be proper to further say that whether members sent to Congress from any State shall be admitted to seats, constitutionally rests exclusively with the respective Houses, and not to any extent with the Executive. And still further, that this proclamation is intended to present the people of the States wherein the national authority has been suspended, and loyal State governments have been subverted, a mode in and by which the national authority and loyal State governments may be re-established within said States, or in any of them; and, while the mode presented is the best the Executive can suggest, with his present impressions, it must not be understood that no other possible mode would be acceptable.

Given under my hand at the city, of Washington, the 8th. day of December, A. D. one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

ABRAHAM LINCOLN

By the President:

William H. Seward, Secretary of State.



## PROCLAMATION ABOUT AMNESTY

March 26, 1864

By the President of the United States of America:

### A Proclamation.

Whereas, it has become necessary to define the cases in which insurgent enemies are entitled to the benefits of the proclamation of the President of the United States, which was made on the eighth day of December, 1863, and the manner in which they shall proceed to avail themselves of those benefits:

And whereas, the objects of that proclamation were to suppress the insurrection and to restore the authority of the United States, and whereas the amnesty therein proposed by the President was offered with reference to these objects alone:

Now, therefore, I, Abraham Lincoln, President of the United States, do hereby proclaim and declare that the said proclamation does not apply to the cases of persons who, at the time when they seek to obtain the benefits thereof by taking the oath thereby prescribed are in military, naval or civil confinement or custody, or under bonds or on parole of the civil, military or naval authorities or agents of the United States as prisoners of war or persons detained for offences of any kind, either before or after conviction, and that, on the contrary, it does apply only to those persons who being yet at large and free from any arrest, confinement or duress, shall voluntarily come forward and take the said oath with the purpose of restoring peace and establishing the national authority. Prisoners excluded from the amnesty offered in the said proclamation may apply to the President for clemency like all other offenders, and their applications will receive due consideration.

I do farther declare and proclaim that the oath prescribed in the aforesaid proclamation of the 8th of December, 1863, may be taken and subscribed before any commissioned officer, civil, military or naval, in the service of the United States, or any civil or military officer of a State or Territory not in insurrection, who, by the laws thereof, may be qualified for administering oaths. All officers who receive such oaths are hereby authorized to give certificates thereon to the persons respectively by whom they are made. And such officers are hereby required to transmit the original records of such oaths at as early a day as may be convenient to the Department of State, where they will be deposited and remain in the archives of the Government. The Secretary

of State will keep a register thereof, and will on application, in proper cases, issue certificates of such records in the customary form of official certificates.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-eighth.

ABRAHAM LINCOLN

By the President:

William H. Seward, Secretary of State

APPENDIX B  
CONSTITUTIONAL AMENDMENT

# THE CONSTITUTION OF THE UNITED STATES OF AMERICA

## Amendment XIV

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.



APPENDIX C  
LETTERS

Gold Star Parents  
for Amnesty  
25 Beacon Street  
Boston, MA 02108  
(617) 742-2100

Dear

Gold Star Parents for Amnesty is a new organization. We know that there are people in our country who feel hostile toward the young men who felt they could not participate in the Indochina War. We don't feel that way. In fact we think it is time to welcome them home.

Many, like our sons, went into military service. Others chose to leave the country or to go to jail. Each man followed his conscience, and all of us--veterans, resisters, parents--are victims of a policy that had tragic consequences.

We would like other Americans to know that we do not want the continued punishment of hundreds of thousands of our young men. Gold Star Parents for Amnesty feel that a universal unconditional amnesty would be a living memorial to all the young dead soldiers who leave us the task of giving meaning to their deaths.

Please do let us know your feelings.

Sincerely yours,

Patricia A. Simon  
Gold Star Mother

# Gold Star Parents for Amnesty

25 Beacon Street, Boston, Massachusetts 02108, Telephone: (617) 742-2100

May 21, 1974

Coordinator:  
Mrs. Patricia Simon

Assistant:  
Ms. Sandra Margolin

Co-founders, Gold Star Parents:

Calif.

Mrs. Jerome Ettinger  
Mrs. Marie Mariani

Calif.

Mr. and Mrs. Donald King

Iowa

Peg and Gene Mullen

Mass.

Mrs. Ellen Burke

Mr. and Mrs. Rupert S. Carver, Jr.

Ruth and Harry Gottschalk

Mrs. Carolyn Gottschalk

Mr. and Mrs. Laurence Leigh

Mr. and Mrs. George Litchfield

N.H.

Mr. Wesley Simon

N.J.

Mr. and Mrs. Charles Holladay

Mrs. Anna Fine

N.Y.

Mr. and Mrs. Dominic Diliberto

Mr. and Mrs. Robert Ransom

Penna.

Mr. and Mrs. John Good

Tenn.

Mrs. Zelia M. Jensen

Texas

Mrs. Norma Wilder

Dear Ms. Marshall,

Since I don't feel certain  
about your name, forgive me if  
I'm wrong!

I'm curious as to how you  
got our name. If it was not  
from Norma Wilder, Gold Star Parent,  
her address is: 121 Mapleton  
Baytown, Texas. 77520

I'm enclosing, in our packet  
of literature, a sample of our  
mailing which goes only to other  
parents of sons killed in Vietnam.

When you've finished your thesis

...you'll want to help to educate  
 for amnesty, because the problem lies in  
 lack of information by the public and remoteness  
 from the real people to be convicted, and  
 these problems. And of course, underlying the  
 whole issue of amnesty is the issue of the  
 Vietnam War itself. Given that most of the  
 country now realizes we should never have  
 been involved in Vietnam, it is cruel  
 to continue to punish the people who had  
 to make a decision about the war because their  
 lives were on the line!

Keep in touch, and let me know if  
 you'd like more stuff - such as a sermon (!)  
 of mine, etc. The St. Louis Post Dispatch  
 did a week-long series on amnesty in  
 March. I'm sure you could get copies through  
 Grove Curry, there.

Grace —  
 Pat Simon



APPENDIX D

RELIGIOUS STATEMENTS ON AMNESTY

## RELIGIOUS STATEMENTS ON AMNESTY

### American Baptist

Just as we respect the convictions of those young men who have felt that it was their duty to comply with the draft laws of our country by entering military service, so we also respect those young men who, during recent years, have resisted the draft because of their sincere conviction that participation in the Vietnamese war would constitute a violation of their consciences. We deeply sympathize with the families of those young men who have died in the performance of their military duties and we sympathize with those young men and their families who have become alienated from their government through their protest against the war. We honor those men who have sacrificed their future by death on the battlefield and we respect those who have risked their future by conscientious acts of non-conformity. Therefore, consistent with our concept of freedom and conscience, and recognizing that many of our ancestors came to this country to avoid conscription in Europe, we call upon the President of the U. S. to grant amnesty upon the cessation of hostilities or upon major reduction of American forces for all persons who are either in jail or outside the country due to their acts of conscience against the war in Vietnam and the Selective Service System.

American Baptist General Convention, "Resolution on Conscience, Freedom, and Responsibility," 1969.

### Interreligious Conference on Amnesty

Amnesty: A Statement to the Religious Community of America

Passover is the time when Jews remember the mercy of God, who brought his people out of bondage, and who ever since then has upheld, forgiven and restored them countless times. Holy Week is the time when Christians remember that Jesus wept over Jerusalem saying, "Would that even now you knew the things that make for peace."

We have met here in Washington to discuss how as Americans we can make peace one with another once this terrible war is over.

Since President Nixon took office, three million Indochinese have been killed, maimed, or rendered homeless. Since the war began over 55,000 Americans have been killed, 350,000 have been wounded, over 75,000 are in exile, over 350,000 have deserted from the military, more than 10,000 have been prosecuted for draft violations, and over 300,000 Vietnam era veterans have less than honorable discharges. Social reforms are still being set aside because of the demands of the war machine. Spiritual dislocations, though harder to articulate, are deeply felt by all. Clearly, then, there can be no honest peace among us until we finally and totally end all involvement, military and financial, in the Indochinese war.

We call once again upon the Administration to withdraw immediately all troops from Indochina, including all air and naval forces; to end conscription as a method of raising a military force; and to make America's wealth available for the rebuilding of the nations of Indochina.

At home we need to meet our obligations to the men who have fought the war, to those who were killed, and to the Vietnam era veterans. The families of those killed, especially the children, deserve every assistance that a compassionate society can provide. The veteran similarly requires our help. One quarter of the 5.3 million veterans of the Vietnam era do not have a high school education. Of these, only 12 per cent have used the GI Bill for any purpose. The unemployment rate for black veterans in the eighteen through twenty-four age bracket is 21 per cent. At least 60,000 Vietnam era veterans are addicted to heroin. Many others report spiritual and emotional crisis because of their war time experience. The GI Bill for education has the lowest benefits in history. Many employers ignore and actually discriminate against the veteran. Few educational institutions manifest significant interest in the veteran. Governmental and private remedies lack the imagination and funding necessary to respond to the addicted veteran.

Finally, it is not too early to give thought to what must happen when the war ends. Various kinds of amnesties are presently being proposed by both opponents and supporters of the war, because both recognize that the war has caused a crisis of conscience perhaps unparalleled in this nation's history. We believe that genuine reconciliation demands that a general amnesty be granted to Southeast Asia. The only exception we countenance is for those who have been convicted of violence against persons; and even these should have their cases reviewed individually.



Such a general amnesty would include:

(a) draft resisters and deserters who have exiled themselves to other countries or who surrendered their citizenship;

(b) those currently in prison or military stockades, those on probation, those who have already served their sentences, and those who face or are subject to prosecution for draft or military law violations;

(c) draft resisters and deserters who have gone underground to avoid prosecution;

(d) Vietnam era veterans with less than honorable discharges;

(e) those who have committed or are being prosecuted for civilian acts of resistance to the war.

In support of such a broad and unconditional amnesty certain considerations appear to us as crucial.

God alone knows what finally determines the actions of men, and all of us know that few of us do anything for one reason alone. Therefore, we feel it unwise to attempt to judge the motives of those to be given amnesty, just as we do not presume to judge the motives of those who served in the military. Nor do we feel, as do some, that draft evaders and deserters deserve different treatment. We feel that no one should be penalized simply because his eyes were opened after entering the military service. The essential difference between the draft evader and the deserter is only a matter of timing.

As things of God cannot be rendered to Caesar, no one can surrender his conscience to the state. For centuries religious bodies have affirmed an individual's moral right to refuse participation in a particular war in which the claims of his government and those of his conscience conflict. Yet despite insistent pleadings, Congress has steadfastly refused to provide for "Selective Conscientious Objection." This failure has been a major reason for the moral crisis of tens of thousands who saw themselves with no choice but exile or prison. Amnesty would be a belated recognition of a right they should never have been denied.

Often, the Armed Forces uses the less than honorable discharge as a means of getting rid of those they consider "undesirable." These too, are victims of the war and should not be scarred for life.

In summary, we see amnesty, not as a matter of forgiveness, but as a "blessed act of oblivion," the law's own way of undoing what the law itself has done.

Amnesty would demonstrate that America is still capable of a communal moral act. It would be bitterly ironic were we to make peace with the peoples of China and Southeast Asia but persist in vindictiveness toward



those of the young generation who refused to share in the brutalities of the war.

By seeking amnesty we do not dishonor the consciences or the acts of those who fought and died. Our hope is that by abstaining from all punitive acts, against those who prosecuted this war and against those who refused to participate in it, we shall affirm a spirit of humanity that will stand the nation in good stead as it makes peace with itself and with the world.

Interreligious Conference on Amnesty, Passover and Holy Week 1972, Washington, D. C.

### Conference on Major Superiors of Men in U. S. A.

Aware of the need to speak to value issues in American society, and mindful of our role as religious leaders within the Catholic community, we members of the National Executive Board of the Conference of Major Superiors of Men address ourselves to the critical question of amnesty.

We consider amnesty to be a positive act of compassion directed to our fellow citizens who are in prison or in exile because of their response to laws relating to military service. It is a proclamation that persons are free to return to their families and homes, exempt from all legal prosecution for whatever actions they may have felt obliged to take regarding participation in the Vietnam War. It restores them to their full legal status of living and working in the United States as free and useful members of society.

Amnesty does not mean "forgiving"; it is not a judgment of condemnation, nor an act of condonation. It is simply an act of "forgetting," a wiping clean of the slate, or overlooking of any past legal transgression.

We feel that the most urgent need facing the United States at this moment is the need for reconciliation. After a decade of bitter dispute over the Vietnam War, we Americans need to be brought together, to bind up our wounds, to unite in a common purpose to promote peace and justice.

Thousands of young men are currently in prison or in exile from the United States because of the positions which they took on the Vietnam War. Their status is both a symbol and a cause of division in our country. Amnesty would be a healing and reconciling measure designed to overlook the past and move a united nation into the future. It would restore confidence in the ability of our government and its people to foster a sense of renewed purpose, especially as we approach the 1976 Bicentennial Celebration.

We feel that the criterion to be used in deciding what kind of amnesty is chosen is clear; what best promotes the goal of reconciliation? We believe that a universal and unconditional amnesty will do the most at this time to promote reconciliation.

(1) It should apply to all individuals who have broken laws regarding conscription into military service or who have withdrawn from participation in military service. This will affect those who have avoided the draft through going underground or leaving the country, those who have been imprisoned because of non-cooperation or forms of conscientious objection not recognized by our courts, and those who have left military service or have been imprisoned because of refusal to take part in combat. (We are not speaking here of criminal offenses unrelated to the draft and the war.)

(2) If it is to be a true forgetting, the amnesty must not impose any penalizing conditions, such as alternative service or recording the facts of the case in public records. Any penalizing conditions would not heal division nor release harmony to the nation.

As American Catholic religious leaders committed to justice and peace, we call upon the President and the Congress to take the necessary steps to grant such an immediate universal and unconditional amnesty.

We are aware of the political difficulties involved in such an action and of the heated debate to which the issue of amnesty gives rise. There are certainly honest differences of opinion about the desirability, feasibility, and consequences of such action. However, it is our considered opinion that the amnesty we call for is the surest path to promotion of reconciliation, in our nation.

In order to commit ourselves to the task of reconciliation, we are taking the following actions:

(1) We are sending a copy of our Call to all of the members of the Conference of Major Superiors of Men, inviting them to share this statement with their own communities, to thereby stir up discussion and reaction, and to send their response to us.

(2) We are communicating our position directly to President Nixon and to all members of the Congress.

(3) We are inviting members of the Conference of Major Superiors of Men to join their signatures to ours in support of this statement on amnesty at the Annual Assembly in June, 1973.

(4) We are asking the American Catholic Theological Society to commission a task force on the theological dimensions of amnesty in order to deepen the understanding and further acceptance of this act of reconciliation by Americans.

Issued by the Conference of Major Superiors of Men in  
the U. S. A., Inc., Washington, D. C., May 28, 1973.



## TESTIMONY FOR CLERGY AND LAITY CONCERNED

Presented by Trudi Schutz Young, James Credle, and Wayne Spencer to the House Committee on the Judiciary for its hearings on amnesty: March 8, 1974.

### Part I: Clergy and Laity Concerned Testimony--Trudi Schutz Young

I am Trudi Schutz Young, Program Director of Clergy and Laity Concerned (CALC). We are a nationwide network of persons working within the religious community. The organization began and grew as a direct response to the United States war in Indochina. From the beginning, participants in CALC included religious people at the national and local (congregational) level. We represent 50 local chapters and a participating membership of over 50,000 persons. We work directly with persons of all faiths--Protestant, Catholic, Jewish--both through institutional religious structures and at the personal level, trying to express our religious heritage and traditions through community work and life.

During the "hot-war years" of the Indochina conflict, CALC developed its ministry in a variety of ways. All over the country there were special church services describing the moral and political horror of the war; ministers, priests, and rabbis spoke out--from their pulpits and at national demonstrations--about Americans' responsibility to work for an end to the war. Throughout the country, often in church or synagogue buildings, we helped to develop a network of draft and military counselling, to aid those in need of help as they confronted the draft and the war. We provided a ministry (financial and personal) to many of the early exiles and deserters in Canada and other countries. We worked with many of the other religious and peace groups to build the massive demonstrations and mobilizations, in Washington, D. C., against the Vietnam atrocity.

Continuing in our work, we now see our goal in terms of understanding and confronting America's use and misuse of power. To further this goal we engage in programs focusing on the continuing war in Southeast Asia, the need for a full amnesty, the role of corporations in U. S. foreign policy. We publish a bi-weekly newspaper, American Report and continue the development of our grass-roots field program. We see each of these projects as a handle, an approach, to the American power systems we seek to transform. Together, our programs connect in a strategy for the religious community that enables us to



understand our relationship (as religious persons and institutions) to the problems we wish to help solve and, as we tackle them, begin to right some of the particular wrongs in our society.

There is, for example, no universal and unconditional amnesty for those who resisted the war in Indochina. U. S. aid continues to the Thieu regime, perpetuating and undergirding his military and a prison system which holds several thousand civilian prisoners, in violation of the 1973 Paris Peace Agreements.

Since CALC came into being in response to the war in Indochina, it was an obvious "next step" for our organization to begin working toward an amnesty for those persons who resisted that war. We began to talk, nationally and locally, about the dimensions of our work on this issue. In doing so we began to recognize some of the lessons we had learned as a result of our Vietnam work. Initially, our response to the Indochina war was primarily one of moral outrage: we saw it as a violation of our human and religious beliefs about brotherhood and personal dignity, about the rights of persons to live and choose their own personal and political constructs. We believe that our American government had no place in the civil difficulties of the Vietnamese (the people of Indochina in general) and understand that our government's intention was not, as it proclaimed, to "free the Vietnamese" from the exaggerated dangers of communism or to perpetuate ideals of democracy, but rather to entrench and develop our economic and political interests in Southeast Asia. The final result of this policy is perhaps best summarized by the U. S. military officer who looked at a village destroyed by American fire-power and said: "We had to destroy this village to save it."

To understand this reality about America's involvement in Indochina brought many of us to a place where we had to deal with this unprecedented war in our country's history as but one of the more horrendous and public examples of America's foreign and domestic policies and priorities. Seeing this, we began to confront the relationships between the military, industry, and the government: we understood that it is in the combined interest of these institutions to perpetuate (less publically, now, since there has been a great outcry in our nation against the Vietnam war) a policy of Indochina-like wars.

Such an "Indochina-wars" policy is not unconnected with many of our domestic problems. Most simply, the tax dollars that are poured into the use of American power abroad are monies that are not being spent to deal with much of what is sick and unbalanced in our society at home. But at a much deeper level, there is a link

between what America stands for abroad and what it is at home.

You as legislators and we as American citizens have long been trying to understand and deal with the race and class tensions and inequalities which exist in this country. I would say to you that it is because these race and economic tensions and inequalities exist that America can continue the foreign policy manifested in the last three administrations.

I worked for several years as a draft and military counselor with the Central Committee for Conscientious Objectors in Philadelphia. In my work there it became overwhelmingly clear to me, through the cases that came across my desk, that it was the people of color and lower economic class who are America's prime victims of the war in Indochina. They are victims on several levels. First, unlike white people of the upper and middle classes, they don't have the advantage of education and environment which would have enabled them to know about or articulate the qualifications for alternatives and deferments from Vietnam service. It was basically the white and advantaged people who saw choices in relation to the war and the people of color and lower class who were shown once again the limitation of choices, due to their situation. For these people the military represented a chance for mobility, education, and development. The military claims to offer training, pay and benefits. Structured into a society where jobs and mobility exist primarily for the "haves" rather than for the "have-nots," the military represented an important, viable option.

For the disadvantaged, principles of "conscience" and "sincerity" (criteria testing those who applied for conscientious objector status) meant such basics as how can I live my life in the best way possible; how can I be with and support my family; how can I achieve human dignity. And yet, saying something like this on a CO form would probably have enabled many of these persons to obtain a deferment and, thus, continue to work on their community's issues. However, we all know of the discrepancies in the way selective service boards operated and about the various interpretations of selective service regulations around the country. We also know how unevenly spread was the information about qualifying the CO classification. Many young men (indeed, many members of the draft boards with which I had occasion to deal) believed that conscientious objector meant either "Quaker" or "Mennonite." Knowing the real legal options within the selective service system was a privilege and a luxury available to a very small number of persons.

Thus, if one puts together the unavailability of adequate information and counselling about alternatives



for the majority of young Americans facing the draft, and the perceived benefits that an already-disadvantaged person in the society connected with military service, it is very clear why many people enlisted in the armed forces or accepted the call to be drafted.

Once in the military, some people did indeed come to a point where whatever benefits they received could no longer be justified in juxtaposition to their killing and, potentially, being killed, in a war that had no meaning for their lives back home. Their dissatisfaction and lack of belief in the cause for which they were asked to fight war coupled, for many, with growing frustrations with the rigidity and inhumanity of the military structures in which they were serving. Thus, there was an incredibly high desertion rate and a high degree of petty offenses and misdemeanors which were the soldiers' response to an intolerable situation.

When CALC came to talk about and deal with the issues of Amnesty, our memory of draft and military counselling was vivid. And we had to see that "resistance" to the war was a much broader and more complex issue than only the forms of resistance of those (basically white and middle class) persons who had the options, the education, and the knowledge of choice which led them to decide on Canada, prison, or CO ... or, even college.

And since our definition of "conscientious" had been broadened by our growing understanding of the context in which different people from various classes responded to the war, a context which developed out of life-situations which very much affected the ways in which they could or could not say no to killing and being killed--we could not leave this understanding behind when we spelled out the meanings of amnesty. We had to understand that "conscience" is not tested by a person's use of our, basically white and middle class "church" language and action-response. We had to know that people come from different places, and act accordingly.

For all of us amnesty means some form of reconciliation. Indeed, our society is badly riven. We are a divided society economically and racially, as I have already pointed out. We are further divided by an American people who have grown to hate the war in Indochina and, at the same time, desperately want to find some kind of honor in the country where we live. We are also divided because of the internal results of the war here in America. People who fought in the war, the veterans, are unable to get jobs because of bad papers; they are unable to receive many of the veterans' benefits such as medical treatment, education, housing, and legal assistance. They who fought the war bear an ongoing stigma as a result of fighting in that war.

We all, I think, have a duty to restore more unity to this country of ours. The civic duties taught by both Judaism and Christianity are simple. We are to carry the good tidings to all who are afflicted, to bind up and comfort the broken-hearted and all who mourn, and bring recovery of sight to the blind. We are told to proclaim release and liberty to the captives, to open the prisons of those who are bound and oppressed. These duties, I would insist, are the very essence and core of the social contract under which we live. And they command us, regardless of who or which party occupies power. And it's these duties, which, if we fulfill them, lead us to proclaim the need for a universal and unconditional amnesty as the only justice that could exist within this country for those who resisted the war in Indochina.

But in seeking either justice or reconciliation, or both, if we can, we cannot make meaningless the acts that have produced the problem: the acts of government and the acts of resistance. That is to say, we must face the fact that the government commanded and men disobeyed. And this occurred at the ultimate level--where government commands men to kill and be killed unjustly. And I think we, in our time, are being asked by history to say what are the limits to such commands.

As a national state we have become a great killer. We are killers abroad, with our Indochina-wars policy; and we are killers at home in terms of the social stratification which enforces our ability to make such wars. There must come a day when this conceit ends. Or there will come the day when humanity ends.

Amnesty would be a life-affirming measure of not only reconciliation but also a movement toward the kind of justice and equality which this society so desperately needs. It would signify a reversal of the now obsolete prerogatives of the state to intervene in young peoples' lives, and to dominate them for its own purposes.

Is the guilt for the war in Vietnam common to all of us? There are many arguments against the idea of universal guilt. Knowing them, I still must say that for this war we are all to blame. All of us, that is, except precisely those who bear the punishment for it: the young, the poor, and the non-white. And it was from the ranks of this group of people that there came the men and women who said "no," who went to prison, into exile, dropped out of sight, made their separate peace by desertion or resistance within the military. They withdrew from the killing; and by so doing they added a fraction to the survival of life--and by so doing they subtracted a fraction from the state's freedom to destroy and kill at it's will.



And this is true, regardless of their motivation. Let us not lay once more on young men's lives the dead hands of bureaucracy, this time, probing, according to its norms, for their conscience. What an awful pretense and presumption, as it has always been, that the state can determine what is and what is not a conscientious act. I can think of hardly any worse outcome of the amnesty question than the imposition of tests of conscience and motivation, administered as they would have to be, by bureaucracy. We are all to blame for this war. And, therefore, who is qualified to judge? Let the men who were court-martialed and administratively discharged with less than honorable discharge ratings be given freedom and clean records. Their lives have been mangled badly enough already by state policies that were none of their doing and that were, themselves, on the thin edge of legality, if even that.

Our local chapters around the country and the people in churches and synagogues who relate to us more broadly are all grappling with what we have learned, what we know, and what we can begin to do to change some of the wrongs and divisions among us as a society. We must find out who in our communities are the men and women affected by the Vietnam era. We must find out the kinds of disabilities they have and continue to suffer. In addition we must work to educate both ourselves and the broader American public about the broader message inherent in the word amnesty: a message which speaks of racism and classism and division, and a message which compels us to deal with those issues. Thus, amnesty, when it is granted, will be one step toward the healing and reconciliation the country so sorely needs.

I am enclosing as part of our written testimony, two documents. One is a report from Minnesota CALC, who have done a statistical study of Minnesotans who need amnesty. As a result of their study, Minnesota CALC has discovered that there are 11,895 persons who will benefit from a universal and unconditional amnesty in that state alone.

Secondly, I am introducing "Backgrounds: Other Than Honorable Discharges--Problems and Prospects for Change." This document was released by the Vietnam Era Veterans National Resource Project and the National Council of Churches. It is not a comprehensive study but does provide a general outline and sketch of the situation.

I must close with one final comment. I find it a source of both anger and considerable sadness that among those you have asked to testify before you, in your quest for a way to deal with the issue of amnesty, there is almost no one (if indeed there is anyone) who represents the people of whom we speak when we talk about amnesty.

If anything I have said in my presentation is to be taken seriously, if we are to work seriously, then our seriousness needs to extend to a hearing of those people who are directly affected by the question of amnesty. It is for this reason that when your committee asked me to testify, I explained that I could only testify if I were able to bring with me, to present the burden of the testimony, persons who are potential recipients of a full amnesty. The testimonies of two of these persons follow mine, as part of the Clergy and Laity Concerned statement.

Part II: Clergy and Laity Concerned Testimony--James Credle

My name is James Credle. I am currently the Director of the Veterans Education and Training Services for the Newark Colleges of Rutgers, located in Newark, New Jersey. I was drafted into the Army in October of 1965 and honorably discharged in 1967. My involvement and work with veterans began during my first semester at the Rutgers Law School. By the end of the semester, I was convinced that my work in assisting veterans who lived in the Newark metropolitan area was by far more important than my personal goal of completing law school.

However, it was in Vietnam on the daily search and destroy missions conducted by my unit, the 196th Light Infantry, where I began to understand that the war was really about supporting an unrepresentative dictator and his regime and not about freeing the Vietnamese people from the clutches of communism. I began to understand it more clearly when I would talk to the Vietnamese soldiers and they seemed as unclear and as non-understanding as I about the reasons why we were fighting. But I saw it more in the faces of the old men and women as they looked at me and the other soldiers with a look of deep hostility and mistrust. You see, as a member of the Medical Platoon of the Headquarters Company 2/1 Battalion, I participated in what became known as "Med Caps" or visits into villages to offer medical aid to the villagers.

I began to be further troubled within my own head when in the early part of 1967, shortly before I was to return home, I picked up a newspaper while out on a search and destroy mission and read a very vivid description of the 1967 riots as they were occurring in Newark. I cannot describe to you how it felt to be dodging bullets in Vietnam while, at the same time, reading newspapers and letters from family and friends about the death and destruction caused by riots at home. At this time I had less than three months before I would be discharged and sent home. My immediate thoughts were: "What? Another war." Later, through the bullets, the bombs, the mortars,



the death, the destruction, the picking up bodies of the dead friends and the bandaging of the wounded--my immediate need became to first survive this, then worry about the war at home.

It is the war at home which I am here to speak about today. A war that began within the earliest structure of this country and continues through today. It is important to begin the specifics by describing for informational purposes a general understanding of how the military molds the individual or group in order to fit certain expectations. Then I will describe how this leads to the giving of "less than honorable" discharges to a great many people from the Vietnam era.

However, before doing this I think that it is important to note certain facts relevant to Vietnam veterans who have "honorable discharges."

(1) The GI Bill benefits for education are highly inadequate and generally non-existent in areas such as housing and business loans. As the Vietnam era veterans look around them today they find no gratitude and no respect. They find no jobs and no help. They find that they can't afford education or training. They find themselves wandering aimlessly, searching for the life they had. They are America's albatross.

(2) The present administration attempted to cut back on many benefits that were previously available to disabled veterans, many of whom were maimed or rendered permanently disabled during the Vietnam war. Even the current budget provisions for hospital and out-patient care is extremely insufficient. Although Vietnam era veterans account for nearly 20 percent of the participants in all of America's armed conflicts, they received only 3.7 percent of the Veterans Administration's expenditures through June, 1972. By comparison, World War II veterans account for 40 percent of all participants, and they have received nearly 50 percent of the VA's expenditures.

(3) President Nixon has stated a desire to aid in obtaining opportunities for veterans; but veterans with whom I work exemplify the generally-climbing rate of unemployment, at an alarming rate, for veterans. According to Labor Department statistics for December, 1973, of the 4.6 million Vietnam era veterans now between the ages of 20 and 29, a tremendous number are unemployed, with the rate for minority veterans, 20-24 years old at 13.2 percent in the third quarter of 1973.

In the early part of my Army career I am reminded that veterans like myself were molded into soldiers through the very real cohesive force of fear combined with humiliation in order to produce obedience. Throughout my training I, like others, was taught all of the

"punitive" but few of the "redress of grievances" charges adhered to by the military. We were barraged with "punitive" charges of which we would be convicted if we did not learn not only to obey orders individually but also, we were expected to pressure dissident members of our squad so that they would be obedient.

For example, by not having highly shined boots, one could be given an Article 15 (a punitive charge) and relieved of a weekend pass. The point is that after serving in Vietnam for a period of time, men learned not to fear those who were giving unrealistic orders. Squad and platoon leaders, recognizing this, saw that their only recourse was to get rid "at any cost" of those who were often described as "trouble makers." Examples of trouble makers to many sergeants or platoon leaders were (a) individuals who voiced an opinion and exhibited knowledge of their legal rights; (b) a small group of minority veterans who would congregate together; (c) individuals who asked knowledgeable questions during instruction sessions; and (d) simply someone who the sergeant or platoon leader did not like for some unstated, yet obvious reason.

I have witnessed a situation where a lower ranking NCO failed to salute a car (which belonged to a commissioned officer) he did not see, but was given an Article 15 anyway. Once you became identified as a trouble maker, for whatever reason, this label followed you wherever you went. Thus, harrassment and bullshit details were designated for these people, making their already-troubled understanding of what was happening to them during the Vietnam era much more difficult to deal with. This class of veterans is one of the categories of Vietnam era men and women for whom I ask universal and unconditional amnesty.

My simple reasoning is that because the Vietnam war was unpopular; because many of the Vietnam veterans are not the rich, the powerful, and the articulate; because the veterans of this war have been unable to organize on their own behalf (because of being labeled drug addicts, baby killers, and displayed on the front-pages of newspapers as criminals, whenever a Vietnam vet commits a crime); because many Vietnam era victims are deserters or draft resisters in exile or underground; because other Vietnam era victims served prison sentences for conscience-sake (refusing to kill and be killed) and, thus, are denied many of their civil and legal rights; because many civilians resisted the war and are serving sentences or facing charges; and because there are still many thousands of non-registrants and resisters who face indictment and imprisonment under the present legal/judicial system; and, finally, because there are many veterans with other than honorable discharges--so many of our young people's lives have been



destroyed or at least altered in such a way that they are destined to spend the rest of their lives in utter discontent and isolation from the rest of the society.

Each of these classes of people resisted in a particular way, because of where in the society they came from and at what point in their lives they became aware of the destruction and manipulation which was the Vietnam war. Each of them was saying "no" in his or her own way. But all of them were saying their "no's" to the same war and war-making systems. A universal and unconditional amnesty would bring about a general, nationwide concern for aid in all forms to all peoples who have suffered from this war.

It is no wonder that statistics indicate that nearly 26 percent of Vietnam era veterans have used drugs since returning from the war. In addition, 30 percent of all male prisoners in state and federal penitentiaries are Vietnam era veterans. Finally, 560,000 Vietnam era veterans are marked for life by a military discharge system of codes, which defames one's character and are unsubstantiated by fact or trial. For this class of more than half a million veterans, amnesty would have to include simply one discharge category, without a "SPN code," since in many instances, this coding system prevents employment and denies VA benefits. The high rate of imprisonment and drug usage among Vietnam veterans can be attributed to the fact that few alternatives are granted people who are already without resources.

It is mainly in your hands to extend broad relief and end the suffering for the many young Vietnam-era-affected people.

For some, amnesty will mean higher education possibilities; for some it will mean employment opportunities; for some, housing; for many, amnesty will mean the medical and psychiatric help necessary for themselves and their families due to the personal impact on lives of the Vietnam syndrome; and for all categories of those affected by the issue of amnesty, it will mean a full restitution of all civil and legal rights and liberties.

At present the alternatives and opportunities listed above (which spell out our meaning of a full and complete amnesty) do not exist for our Vietnam generation. Again: IT IS UP TO YOU, THE CONGRESS.

If universal and unconditional amnesty is not granted, the facts show that only those with resources will benefit. Current statistics show that those veterans attempting to upgrade their discharges with legal help, and those who appear before the review board, have a clear advantage in obtaining an up-graded discharge. Since two out of three people with bad papers are lower class and

non-white, and since these are precisely the people who have neither the money nor the ability to obtain legal help necessary to effective discharge up-grading, it is clear that the present up-grading process manifests the racism and economic prejudice of our society and the military.

In the final analysis, for veterans and others who would benefit from a blanket amnesty, your refusal to act on the amnesty issue will continue to leave them as "wasted people" or "third class citizens."

For veterans from previous wars, war was hell. And returning home was a time for healing and local and national celebration of unity. For America's Vietnam era victims, war was hell--but many cannot return home; and even for those who are physically home, the hell continues. In an address to the nation, on March 24, 1973, President Nixon said of the Vietnam era veterans: "We must demonstrate the gratitude we feel by the actions we take. We must honor them with the respect they have earned and the affection they deserve." Clearly, neither Mr. Nixon nor the American public are living up to this injunction.

I say to you the price of Vietnam is too high a price to continue paying. The war is not over--America's war is still raging in Vietnam and in our society. And unless full and complete amnesty is granted, the injustices of the Vietnam era will continue to be borne, in this country, by the young and the disadvantaged.

### Part III: Clergy and Laity Concerned Testimony--Wayne Spencer

My name is Wayne Spencer. I am a twenty-five year old Vietnam era veteran living in East St. Louis, Illinois. I hold a less-than-honorable (General) discharge. I was raised in a family of five and I went to grade school and finally finished twelve grades of high school.

My social-economic class was middle-class-poor. I helped support my family along with my brother and my father. My mother did not work. From time to time we were on general assistance aid.

After I graduated from high school, at the age of eighteen, I enlisted in the U. S. Navy for three reasons: (1) To avoid being drafted because I did not take to the idea of fighting in Vietnam and perhaps losing my life. I am not a coward, but three of my close friends were killed just before I entered service and I just could not see any justifiable reason for fighting; (2) I was to be married soon and the lady I was going to marry was carrying my son. I thought being in service would help me develop the skills I needed to support my family;



(3) I wanted to get away from home and perhaps find another place in the United States to live.

I really didn't want any part of the military. But after talking it over with my recruiter, my morale was boosted and my hopes were high. The next thing I knew, I had become a tool for the U. S. Government.

My first duty station was horrible. I didn't get the duty station of my choice, like my recruiter had promised me in his bouquet of fantacism. They stationed me in Pearl Harbor, Hawaii, aboard a World War II destroyer which was about ready to fall apart. They gave me a chipping hammer and a broom, a paint brush and a can of paint every day for six months. I did not come in the service to become a painter. I wanted to become an electrician. After making a number of determined attempts to pursue my intentions of what I had come in for, I finally came to the conclusion that my recruiter had sold me down the river and that the military wasn't interested in what I wanted but only in what they wanted me to do.

By then I had become discouraged, disillusioned, and had no one to turn to but my loved ones at home. By this time my wife had given birth to my first son. Unfortunately, I couldn't be there when my son was born. This is when I decided I would send for my family to live with me in Hawaii.

But we had come back from a six months West Pacific cruise and I had managed to save enough money to go home first on leave. Sending for my family only presented more problems. I could not support my family on the income I was receiving from the Navy.

My second son was born in Hawaii. Since I had missed my first son's birth, I was determined that I wasn't going to miss this one. So I put in a request to get leave, since my ship was going out on a ten-day cruise. My request was denied and I missed ship's movement deliberately. My CO had told me that the Navy comes first and my family second. As a result, I suffered a forfeit in pay and fourteen days restriction. I had no choice but to send my family home.

I was told by my superior CO that I could get a change in duty station after two years, with hopes of getting stationed closer to home. But instead they transferred me to another ship very much like the one I was on. This, too, was in Pearl Harbor. All this happened after I had consulted a chaplain and told him of my problems.

Things weren't looking up for me at all. My attitude about the military was way below standards. I only wanted out. I began drinking, smoking dope, and dropping pills. I was constantly reporting late for duty. I wasn't properly counselled and my problems were steadily

getting worse, and steadily getting ignored. Later, I was busted with two joints and processed for a General discharge after three years and nine months of service (that was almost my four years' enlistment).

Adjusting back into society wasn't easy. I couldn't find a job. (I had "bad papers.") This caused financial problems for my family and later resulted in a divorce. I am separated from my wife, now, and have two children to support.

I am one of the many Vietnam era veterans in America who suffers from a bad discharge. In my opinion the mistreatment I received in the military is directly connected with the reasons for and the ways in which America conducted its Vietnam war. I was in the Vietnam era military which was not fighting for anything I could believe in and was not in any way seeing or dealing with me and my needs. My response to the Vietnam war and to the military which fought that war is what caused me to get bad papers.

An amnesty that is just (universal and unconditional) must include people like me who were trapped into needing and volunteering for the Vietnam era military for survival and then trapped by what we experienced in the military. An amnesty must also deal with people who are suffering from additional, permanent social prejudice and disadvantage as a result of the bad papers we received.



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