

ordered to fight assumed that they had an obligation to follow the government's orders. Some were eager to do so. They did not act dishonorably or uncourageously by obeying. At the same time, those who thought the war immoral and illegal showed extraordinary courage by defying the power of the United States government.

What Needs To Be Done To Obtain A Universal, Unconditional Amnesty?

1. Obtain and publicize information about war resisters and amnesty, through personal contacts, the media, meetings, and the like. The ACLU Project on Amnesty has such material, including a list of sources for other printed materials, books, films, speakers, etc.

2. Arrange for public and organizational meetings on amnesty.

3. Identify the families of war resisters in your community and help them organize into an outspoken and visible part of the amnesty movement, in conjunction with veterans, ex-prisoners of war, Gold Star Families, and other war victims who support amnesty.

4. Establish and maintain contact with the American and exile organizations (civic, religious, peace, etc.) that are working for a universal and unconditional amnesty.

5. Urge your local community groups, churches, organizations, legislative bodies and the like to adopt resolutions in support of a universal, unconditional amnesty, and send these resolutions to the press, to your Washington representatives and to the President.

6. Circulate petitions for amnesty.

7. Urge your local newspaper, radio and television stations to make space and time available for discussions of amnesty.

This information was prepared by Henry Schwarzschild, director of ACLU Foundation's Project on Amnesty.

AMNESTY

Questions & Answers

**AMERICAN
CIVIL LIBERTIES
UNION**
22 EAST 40 STREET
NEW YORK, N.Y. 10016

Why Amnesty?

America owes to itself and to all the war resisters the enactment of a universal, unconditional amnesty. The ACLU believes that the American involvement in the war in Southeast Asia was unconstitutional, and that compulsory military service to carry on that war was unconstitutional. Those who refused to participate — to kill and be killed — in an unconstitutional undertaking by our government ought not to be subjected to criminal or administrative punishment. It would be compounding the injustices of this tragic episode in American history if the only people to suffer criminal penalties would be those of the young generation who had the courage to say "NO" to the war. They made the crucial decision of their young lives in the light of what millions of Americans and many of our political and religious leaders said: that the war in Viet Nam was a terrible mistake, if not a ghastly crime.

What Is Amnesty?

Amnesty is the discretionary act of a sovereign state of deciding to abstain from prosecuting groups of citizens who may be in conflict with the law for political reasons. Amnesty is the law's "forgetting" (cf. amnesia) of certain acts, in the interest of social justice and reconciliation. It is the law's way of undoing what the law has done. Like pardon, amnesty is not a right but a matter of grace which a government may perform in the interest of society at large. Unlike pardon, amnesty affects not a single person but entire classes of possible law violators, and unlike pardon it does not remit further punishment for someone already convicted of a crime. Rather it is a decision not to raise the issue of whether there has been any criminal conduct.

Who Should Get Amnesty?

The American Civil Liberties Union advocates a universal and unconditional am-

nesty for all those who have suffered or face criminal or administrative penalties for non-violent acts of evasion or resistance to the draft, to the military, or to the war in Southeast Asia. We seek amnesty for draft refusers, deserters, persons convicted by courts-martial for military offenses not punishable under civilian law, veterans with less-than-honorable discharges, and civilian protesters and resisters to the war.

How Many People Would A Universal Amnesty Affect?

Draft refusers: Some 7,400 men have been convicted by the federal courts for draft violations during the Viet Nam era. The Selective Service System has referred to the Department of Justice for prosecution some 39,000 additional draft violators. There are about 5,700 draft indictments pending. Unknown thousands never registered for the draft and therefore have no present record of delinquency but are subject to prosecution whenever their violation comes to the attention of the government. No one knows how many files lie unexamined in the draft boards around the country that will reveal draft law violations when someone gets around to checking them.

Deserters: According to the Department of Defense, there are now over 32,000 deserters "at large." They are either in exile abroad or they live underground in this country. (Almost 100,000 men deserted from the military per year during the height of the Viet Nam war. Most of them were either apprehended or voluntarily returned to military control.) Many of the deserters did not have the benefits of an advanced education or much reading and discussion about the merits of the war. They could determine only after entering the armed services that they could not accept military life and the brutalities and insanities of the war. Many saw active and honorable front-line service in Viet Nam, only to be so appalled by the senseless destruc-

tion of a people and their country that they left the military on their own. To discriminate against deserters in any amnesty proposal means to make of amnesty another instrument of discrimination on grounds of class and race, just as the burdens of the draft and of combat fell disproportionately on the poor and the non-white elements of our society.

Exiles: An estimated 30,000 to 40,000 war resisters are in exile abroad, most of them in Canada. A few hundred are in Sweden, England, France and other countries. The exiles comprise both draft refusers and deserters. Canada admitted about 20,000 draft-age American men as "landed immigrants" during the Viet Nam era, but many of the exiles could not meet the stringent Canadian qualifications for becoming "landed." They entered Canada as "tourists" and have remained there beyond the expiration of their tourist permits. Their "illegal" status is a severe disability (for example, they cannot legally hold jobs), but the Canadian government has not deported or extradited any American who is charged merely with violation of the draft law or with desertion.

Court-martial convictions: 550,000 men were convicted by military courts of offenses that would not be crimes in a civilian context, over half for absence without leave, about one-tenth for disobedience, others for conduct bringing discredit upon the armed forces, and the like. Since these men would not have been in the military but for the unconstitutional war and draft, their records should be cleared. The proportion of minority-group GI's court-martialed was many times the ratio of the white GI's.

Less-than-honorable discharges: About 450,000 Viet Nam-era veterans have less-than-honorable discharges. Such discharges are given either "administratively," that is, without any due process whatever ("general" and "undesirable" discharges), or as a result of court-martial ("bad conduct" and "dishonorable" discharges). All less-than-honorable dis-

charges carry with them severe disabilities, including loss of veterans' benefits, disqualifications for civil service and other employment, licenses, and the like. Even "honorable" discharges bear code numbers which indicate to government agencies and prospective employers the arbitrary opinion of the military that the veteran was guilty of drug abuse, bed-wetting, disloyalty, apathy, and similar bad habits, thus severely prejudicing the veteran's opportunities. Less-than-honorable discharges have been the military's favorite device to rid the services of "trouble-makers" or to summarily cashier out of the service men who became victims of drug abuse that was so endemic in Viet Nam and elsewhere in the military. In greatly disproportionate numbers, less-than-honorable discharges were imposed upon men from minority communities and from the less well educated and poorer segments of society.

Civilian protesters and resisters: During the years of the war in Southeast Asia, hundreds of thousands of Americans protested the war in demonstrations and acts of resistance. Thousands were arrested on charges ranging from minor, such as disturbance of the peace or trespass, to very serious, such as conspiracy and violation of the espionage acts. Principled, non-violent disobedience and resistance to the war in Viet Nam were not crimes. They should not carry criminal penalties.

Will A Post-Viet Nam Amnesty Be Unprecedented?

No. Amnesty has a long and distinguished tradition in American history. After almost every military engagement in our history, whether at home or abroad, America has extended amnesty to those who found themselves in conflict with national authority over those wars. President Washington extended an amnesty to the Pennsylvania farmers who engaged in the "Whiskey Rebellion." The most famous

example is the Civil War, in which the Southern states committed what the Constitution defines as high treason, namely levying war against the United States; yet not a single political or military leader of the Confederacy was ever tried for treason because of the series of amnesties proclaimed by Presidents Lincoln and Johnson. After World War I, President Harding individually pardoned some of the war resisters of that period, including Eugene V. Debs. After World War II, President Truman established an "Amnesty Board," which tried to make judgments about the merits of each of the over 15,000 men convicted of draft violation. The board ultimately recommended only about 10 per cent of the draft violators for presidential pardon, and the selection process discriminated systematically against the poor, the less articulate, members of minority groups, and adherents of certain religious sects.

Who Can Extend Amnesty?

The Constitution of the United States gives the President the power to grant pardons for federal crimes and, by extension, to grant amnesties. But amnesty can also be enacted by the legislature. A number of amnesty bills have been introduced in the Congress recently and some hearings have been held.

Should There Be An Amnesty Board To Review Each Case On The Merits?

Amnesty by its very nature relates to whole classes of political offenders. A case-by-case adjudication of the moral, religious, ideological or political *bona fides* of hundreds of thousands of young men is therefore uncalled for. Aside from the overwhelming administrative or judicial burden such a process would entail, it must also be remembered that any tribunal would have to make extremely delicate judgments about the personal convictions

held by these young men years earlier when the act of war resistance occurred. Case-by-case examination of the war resisters would discriminate in favor of the educated and articulate, who can communicate a philosophical position about the war to persuade some tribunal of the depth of their conviction.

Should Some Form Of Alternative Service Be Demanded From Amnestied War Resisters?

Alternative service is a form of punishment. All the resisters have already suffered either the pains of prison, the terrors of underground life, or the bitterness of exile. There should be no additional punishment exacted from them. Moreover, no system of forced labor is likely to be socially constructive.

Will Amnesty Create Disrespect For The Law?

Amnesty does not do away with law. Amnesty is a lawful way to undo injustices and destructive hardships created by the law. Since amnesty is a discretionary act, it does not create an incentive for others to ignore or violate laws with impunity, because in the ordinary course of events crimes will be prosecuted and punished. Amnesty would enhance a sense that the law is not an instrument of repression against those who act non-violently in the light of their conscientious commitments.

Will Amnesty Dishonor Those Who Fought And Died In Viet Nam?

The war in Viet Nam produced neither victory nor honor. It produced only victims—in Southeast Asia and in America. Those who served in the war, those who were wounded, those who died were victimized by the war, just as those who went to jail or underground life or into exile were victimized by the war. Most men who were