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By Arlie Schardt

... against all enemies, foreign and domestic;  
and will bear true faith and allegiance to the same.

I take this obligation freely without any mental  
reservation or purpose of evasion.

Reaffirmation of Allegiance, a.k.a. "The Deserter's Oath"

## AMNESTY? WERE JUST BEGINNING

First President Ford gave a full and unconditional pardon to Richard Nixon for all the crimes—known and unknown—he may have committed during the years he was sworn to uphold and defend the nation's laws. Mr. Ford's deal with the former president also called for the payment to Mr. Nixon of \$850,000 for the first year's "transitional expenses" (a sum which was later substantially reduced by Congress).

Next Mr. Ford announced a limited and conditional "clemency" program to provide "earned re-entry" for some of the young men who ran afoul of certain laws and regulations during the years America was sending troops to Vietnam. For those war resisters, evaders and deserters eligible for this clemency, financial

arrangements consisted of assurance that the Selective Service director would find them the "lowest paying jobs possible" for periods of up to 24 months, after which they would be free to pursue their civilian careers as best they could with their records still not expunged.

The whole episode was perhaps the most jarring example of the double standard of justice seen since the Watergate revelations began.

After studying the complicated guidelines for the Ford clemency program, the ACLU—which for three years has been pressing for an unconditional amnesty for all persons having Vietnam-related legal disabilities—denounced the program. "The ACLU considers the Ford

clemency program offensive in its assumptions and outrageous in its implementation," Henry Schwarzschild, director of the ACLU's Amnesty Project, said. "We are finding that almost everyone has better options outside the program than inside."

The ACLU was thereby confronted with a serious dilemma. Knowing that the clemency program would leave most young men no better off than before, and in many cases worse off, what should be done about those who decided to subject themselves to the program anyway?

The decision was a difficult one, for if the ACLU announced a program of aid for young men who turned themselves in, it might serve to lure them back despite warnings of the program's drawbacks.

Yet there remained the fact that some young men would risk the program

because they were anxious to end the hardships of exile or because they wanted to be able to rejoin loved ones. These young men needed legal assistance to help minimize the risks. Therefore the ACLU decided to offer legal counsel to those choosing to try clemency while at the same time implementing the fullest possible campaign of opposition to the program.

On the long-range front, it is obvious that efforts must be increased to win a genuine amnesty—an unconditional amnesty—in the Congress.

But for the next three months, until the Ford program expires on January 31, it is the responsibility of the ACLU to



generate the widest possible publicity and information about the program, to work with all possible organizations in providing counseling centers for resisters, and, where necessary, provide legal representation for those who still decide to seek clemency.

By mid-October, the ACLU Amnesty Project had named Ed Oppenheimer litigation director. The Amnesty Project had put together a critique of the clemency program and a referral list of all other agencies equipped to provide help and information.

**Persons in the United States seeking advice and information about the program should begin by contacting either their nearest ACLU office or phoning the Clemency Information Center, sponsored primarily by the National Council of Churches, at 317-635-8259 (all collect calls accepted).**

The Center is located in Indianapolis, Indiana, because that is the site of Fort Benjamin Harrison, where all processing is being done for those with military records.

The ACLU urges all those living in exile in Canada to obtain all necessary information about the program before re-entering the United States. Otherwise there is the very real possibility of coming home and discovering—too late—that the program will not help. If that happens, the returning exile will probably not be allowed to go back to Canada and will instead be taken into custody.

**Persons in Canada seeking information should begin by calling the War Resister Information Program toll-free at 800-665-8885. Or write to the ACLU Project on Amnesty, 22 E. 40 St., New York, N.Y. 10016, for a copy of the ACLU summary of information on the program.**

In Indiana, where some 1,100 deserters had been processed by mid-October, a team of volunteer lawyers has been formed by the ACLU's Edward Sherman, a law professor at Indiana University.

**Deserters needing on-the-spot help in Indiana should contact Gerald Ortman, ACLU/ICLU at Fort Benjamin Harrison, 317-542-2125.**

In brief, the Ford plan divides personnel into several categories. Persons who violated Selective Service regulations but have not been prosecuted or punished, may turn themselves in to a U.S. Attorney and agree to perform up to 24 months of "alternative service" in a low-paying job designated by the director of Selective Service.

Ironically, because improper actions by the Selective Service were so rampant during Vietnam, most men in the above situation would probably fare better by going through the courts. Approximately 90 percent of those who were referred to the Justice Department by the Selective Service during the war were never indicted because errors by the Service would have made conviction impossible. Of those indicted, nearly two-thirds had their indictments dismissed by the courts or were acquitted.

This also means that many evaders now living in exile are doing so needlessly. They may believe they are under indictment when they are not, or they may fear indictment when in fact they are not indictable. There is also the possibility that some persons may agree to perform

alternative service when they could easily win their cases in court instead.

Another category is deserters who are still at large. Under the Ford plan, a deserter will be relieved of prosecution and receive an undesirable discharge if he turns himself in to his branch of the military, takes a loyalty oath and pledges to serve up to 24 months of alternative service. Upon completion of alternative service, his undesirable discharge will be exchanged for a newly created designation called a clemency discharge.

For reasons best known to itself, the Pentagon has, apparently deliberately, provided a gaping loophole for deserters: they may very likely not have to perform alternative service even though pledged to do so. This is because (1) they would no longer be under military control after receiving their undesirable discharges, and (2) any other federal agency seeking to prosecute them could not win a conviction unless it could prove they signed the pledges in bad faith.

Deserters should also be aware that a clemency discharge may be a bigger obstacle to getting a job than an undesirable discharge, for the clemency discharge labels a man as a deserter. An undesirable discharge, on the other hand, could have been issued to someone simply because his military superior did not like him.

A third broad category under the Ford program is persons who have already been convicted of Selective Service violations or who have been given punitive discharges for absence-related military violations.

These people, many of whom have already served considerable time in prison, would be evaluated by a nine-member Clemency Board headed by former Senator Charles Goodell. Whatever clemency the board offers may involve a period of alternative service.

This very brief summary of the Ford program makes it obvious that no one should subject himself to it without the advice of an expert counselor or a lawyer. The program's calculated defects are too dangerous. Evaders who put themselves in the hands of U.S. Attorneys and the Justice Department, for example, must waive their rights of due process, speedy trial, double jeopardy and self-incrimination—an implicit admission by the government that its program is unconstitutional and cannot stand judicial scrutiny.

Another major drawback: hundreds of thousands of persons now suffering serious legal disability due to less-than-honorable Vietnam discharges are not even covered by the Ford plan. Some 500,000 men were given various types of less-than-honorable discharges for, among other things, such vague reasons as "inaptitude," "apathy," "defective attitude," "character and behavior disorders," "unsuitability" or—shades of Richard Nixon—"national security."

The result is that there are probably a half-million men with such discharges on their records—penalized for the rest of their lives—for actions which would not even be criminal in a civilian context. Their records mean they are permanently handicapped in the job market, or in trying to get a loan, establish credit, or obtain auto insurance.

They are among the only living Americans being required to serve a permanent, unending punishment because their government got them entangled in a war it cannot yet explain.

Everyone else is off the hook (except for the disaster the war has made of our economy). No one is asking Richard Nixon to take a loyalty oath or perform alternative service at sub-poverty wages. Nor is anyone seeking punishment for the leaders whose misjudgments got us into the war, and whose lies kept us there.

For those who so tragically died in Vietnam, nothing can be done. The living, however, can—and must—be helped. The wounded must be given better care; the young men marked by the discrimination of the Selective Service system must be granted unconditional amnesty.

Selective Service was an operation so patently unfair that it was recently described as "national disgrace" which made Vietnam a "poor boy's war," by no less an authority than Col. Phelps Jones, director of national security for the Veterans of Foreign Wars.

To deny these young men amnesty is, in a sense, a form of double jeopardy in itself. They were already singled out once when they were drafted. To punish them again, through a clemency program which will at best still leave them with a bad discharge is to assume (1) that they were treated fairly before and thus must now take the full legal consequences and (2) that all others responded to the call of duty in Vietnam.

Neither assumption is correct.

In fact, during the Vietnam era, of 15.6 million men age eligible to serve, only 1.7 million (11 percent) were inducted. In other words, the majority of those eligible were able to evade the draft because they had the money to go to college, the skill to become teachers, ministers or professional athletes, or the connections to get into the National Guard and the Reserves.

To apply the strictest judicial processes to those in that unlucky 11 percent who got drafted and are now in trouble is to act a bit after the fact. The system should have been operating strictly at the beginning if it is to operate strictly at the end.

Because the Ford plan is incomplete and unfair, it is not the answer. Because no other plan short of unconditional amnesty is either administratively possible (we are talking about anywhere from 580,000 to 800,000 individual cases) or possibly fair, unconditional amnesty is the only solution.

Every American determined to bring justice to this tragedy should be writing to his or her Senators and Representatives, insisting on congressional passage of unconditional amnesty as soon as possible.

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