

Thousands of war resisters

Pentagon and Justice Department officials estimate that there may be as many as 200,000 men living in exile or underground in this country because they resisted the draft. Only 5,755 of them are wanted by the government, however as a result, many of the others may be considering acceptance of President Ford's limited clemency program for war resisters when they do not even need it.

Since the vast majority of war resisters have never been charged with violations and since very few of those prosecuted result in convictions, very few of the resisters would ever face any sentence. Furthermore, for the small number of persons who are convicted, the average sentences have been 3 years of probation and 2 years of alternative service — about the same deal an individual would get if he accepted Ford's plan.

In addition, accepting the clemency plan carries with it some dangerous liabilities. Besides serving 24 months of alternative service, returnees must waive several important rights including the right to be free of double jeopardy, the right to a speedy trial, the right to due process and the protections of the statute of limitations and the right to have an indictment presented to the grand jury.

This last waiver is especially critical since in the majority of cases, the Justice Department probably could not or would not even try to get an indictment since the original induction procedures which were evaded were possibly improper. Many men don't need amnesty because, unknown to them, the courts have established principles which make their

inductions illegal.

In 1970, the U.S. Supreme Court ruled in *Welsh v. United States* that religious beliefs were not necessary to obtain conscientious objector classification. The court said that denials of CO claims they were "non-religious" were illegal. The decision was retroactive and therefore could exonerate thousands of men who filed the draft before 1970. Also, the Federal Circuit Court of Appeals in Boston has ruled that persons who were deterred from filing CO claims because

may not need clemency

they were non-religious and not liable for prosecution.

Several other court decisions and an act of Congress have established the principle that draft boards could not deny CO claims without giving good reasons for doing so. Many men left the country when their claims were denied but could readily assert the impropriety of those draft board rulings as a defense today.

Countless others may not need amnesty because their inductions were not legal for other procedural infirmities. Many draft

boards did not properly review every claim for deferment though they were supposed to. These included medical as well as other types of deferment claims.

Also, the courts have found that draft boards often imposed illegal sanctions on inductees such as reclassifying them to 1-A, accelerating their inductions out of normal order, or not inducting them without reinduction physical examinations. In 1969, the U.S. Supreme Court ruled these sanctions to be

continued on page 5

continued from page 4

"blatantly lawless" which means that many exiles have an absolute defense because of such treatment.

For these and a variety of other reasons, cooperating with the amnesty program may net a prison term where none is warranted, or 24 months of alternative service where none is justified. To help advise and counsel men on the program, ACLU has joined with the United Church of Christ to sponsor a Clemency Information Network.

Persons seeking information on the program and the options open to them

may call toll-free from Canada or collect from the United States. In Canada, the number is (800) 665-8885 and in the U.S., (317) 635-8259.

Henry Schwarzschild, Director of the National ACLU Project on Amnesty, said "full information is crucial in preventing thousands of war resisters from being unnecessarily shanghaied into the punitive clemency program". Simply walking into the U.S. Attorney's office and surrendering may — according to a directive by Attorney General William Saxbe — result in prosecution, if a draft dodger doesn't agree to the clemency program's requirements, even if no charges are pending against him.