

## The Trials of Private Lewis Simon

## The Outcome

On January 5th, the Saturday after New Year's Day, Tod wrote to Lewis and included Eddie's name only in parenthesis. Tod had been planning to visit the stockade two days earlier, but "knew that Ben Rosenthal (your voice in Washington) would be out that Thursday," and figured Lew would have enough activity for the day. The Army had already appointed a military co-counsel for defense, a Captain Brown, and Tod passed on the captain's comment that the Congressman "was very impressed by Lew, and felt he made the strongest possible case." On a less rosy note, Tod also shared Brown's opinion that the brass were "leaning toward a General Court Martial." Still Tod felt that "other considerations," might yet influence their decision making, given that our campaign to bring pressure on the Pentagon was gaining momentum.

We'd already "received about twenty-five copies of letters," to government officials in Washington, and Tod estimated that five times that many had been sent by other supporters who did not cover us with copies. Moreover, we had just gotten out a second mailing to our national list, and, in a marathon that must have involved every member of our team, had "been on the phone with over twenty-five different Congressional staffs." Those contacts would increase when Sailor John left that same week for the Capital "to spend two days working over the Hill." A press conference related to Lew's case was planned for Philadelphia, where Abe Simon would join with other members of FORA from that area. "Be assured," Tod concluded, "that nothing is being overlooked in your defense."

The record confirms Tod's version of assurances. The campaign on behalf of Lew Simon was the most intense we would even undertake within the Amnesty movement. And the

foundation from which that effort was conducted was also the most solid we had yet been able to establish. Accounts arrived from many supporters of the surrender's wide coverage well beyond the East coast. Letters of solidarity and congratulations also came from activist organizations, the most gratifying from affiliates in the hinterland of national groups we often differed with politically, to include regional branches of VVAW, the American Friends Service Committee, and the War Resisters League.

The Fellowship of Reconciliation, based in Nyack, a river town on the Hudson a short distance from Manhattan, invited George Carrano to represent Safe Return at an Amnesty Organizing Seminar to be held on the second Saturday in January. The meeting would assemble the pacifist wing of NCUUA, to include the highly regarded short story writer, Grace Paley, long affiliated with the War Resisters League. One of the country's most visible draft resisters, Roger Neville Williams, author of *The New Exiles* and formally involved with the resister exile community in Great Britain, was also scheduled to attend. It was clear that the impulse for a seminar for "organizers" owed much to the latest burst of nationwide publicity Safe Return's action had achieved on behalf of amnesty. And, indeed, the letter's signatory, Jack Travers, emphasized his hope "that the situation regarding NCUUA... not affect the relationship between FOR and Safe Return.

At NCUUA itself, from his position as director, Jerry Olsen also made noises about possible reconciliation with Safe Return, with George also in this instance being approached as intermediary. "I'm looking forward to your call... to arrange a time to get together to hash things out," Olsen wrote Carrano. "It has been suggested that, if NCUUA and Safe Return develop a good working relationship soon, that you plan meeting during the week of the 28<sup>th</sup> [January] on the Washington thing...a legislative teach-in for sometime in late February." Olsen's letter also

makes reference to a phone conversation I had with Gold Star mom, Louise Ransom. “I assume that their call essentially was the same as the one between us today,” Olsen told George. “So if Mike meets when you and I meet, perhaps he will hear what he wants.”

It is possible that I was open to the meeting Olsen writes of because I had indeed heard what I’d wanted in the conversation with Ransom, some expression of regret for my summary expulsion from the meeting in November. That’s what I recall, and given the strong emotions I have trapped for years concerning the incident, I think my memory can be trusted. This version conforms, moreover, with the “apology” Olsen had mentioned when being interviewed by Judy Miller, already noted in the previous chapter. At the same time I’m certain that neither Tod nor I had undergone a change of heart about subjecting our activities to the NCUUA imprimatur. We might, through the appearance of cooperation, have weighed an attempt to reduce the whispering campaign of hostility directed at us by these competitors, which demanded time consuming damage control, especially when the slanders spread to those whose good - or, failing that, neutral - opinions we depended on for political or financial backing.

A case in point can be illustrated by a nasty letter I received from Ron Carbon, the Business Manager of the *Progressive* magazine, who obviously did not have a high opinion of Safe Return, nor of me in particular. I had apparently used Safe Return’s open channel to Erwin Knoll, the editor, to request an additional use of the magazine’s subscription list for our latest direct mail fund appeal, going over this subordinate’s head. I’d probably done this thoughtlessly, not to pull rank, but from pure convenience during a conversation with Erwin on other matters.

Carbon’s outrage bubbled over the margins of his letter. He unceremoniously warned us “to get your shit together...” That he was “put off by my entire experience with Safe Return,” and henceforth would require that all list requests from us come in writing to “curtail the high

pressure bullshit we've been getting over the phone." As the tirade gathered steam it became clear that Carbon's agenda went beyond simply defending his job description at the magazine. It was a letter of censure.

Having surveyed "his friends in New York, Washington and elsewhere, the "consensus" confirmed, Carbon claimed, that his experience with SR was "absolutely typical." For added indictment he attached a letter from a woman who was disgruntled over a \$3 resister bracelet transaction. The offense was so trivial, it was obvious Carbon was serving as megaphone for the usual suspects - unnamed naturally - with their by now familiar axes to grind around Safe Return's refusal to play nice with them, which is to say, by their rules. "Tod will respond," I scribbled on the bottom of the page. Bad cop; good cop. Obviously, we wanted to reassure Erwin that, in further dealings around usage of the mailing list, we would work within the proper channels, and avoid, if possible, setting too brisk a pace for the Business Manager to keep up with.

There's no doubt that I felt foully abused by these personal attacks. Their impact was immediate and the effects, over the long haul, cumulative. Since Vietnam I had lost ground as a social animal, and I was never overly adept in that realm to begin with. And now, like many traumatized war veterans, I had become chronically temperamental, alternately drawn and repelled by the flame of conflict which burned inconveniently bright within the radical political milieu. It was in groups, primarily among strangers, where I felt most utterly disarmed and vulnerable. Mostly I would tend to withdraw, but I might also act out with excessive verbal fire power when I felt cornered or attacked. Left to my routines, my close circle of comrades and friends, the old charm and ease still made me reasonably companionable. I functioned within the

normal bounds of give and take. Although I'm sure Ann would challenge that, and Tod, of course, over the years had many occasions to see me at my worst.

Years later, one observer with whom I had worked on the board of a food co-op described me as a 'system's guy.' It was Durkheimian moment; my place in the communal division of labor finally fixed. This explained to my own satisfaction, if only in part, why, whenever my talents have placed me in a leadership position, I have often miscarried, and reacted to input from other voices, especially the incurable loud mouths, as spouting more dissonance than I was willing to put up with.

I would wager George Carrano, whatever the details of his particular psychological formation, was cut to a similar pattern, and that this was one basis, as I perceived it, for our affinity. We were both conspiratorial in action - as was Tod - and allergic to any drawn out process that threatened to encumber us. Except, in my case, in situations where I might become excitable and aggressive - as would Tod - George seldom showed his hand. Maybe it was that Italian thing, that potent quality of self-discipline to keep your own counsel under adversarial circumstances that I'd witnessed so often over extensive periods of living in Sicily many years later. I am well aware that this opinion may strike many as rank stereotyping. The fact is that New York ethnics - among whom I proudly count myself and can vouch for at least up to my own generation - have long sniffed out the profiles that distinguish friend and foe wearing a different hyphen from their own.

George's behavior in the wake of Lewis' incarceration contrasted fundamentally with his normal m.o., at least as I observed it. Of course, personal loyalty is a trait most humans value, whatever their individual or cultural make-up. And it was undoubtedly George's loyalty to Lewis that brought him from the shadows where he normally operated, and stamped dramatically

in Safe Return's files his tireless efforts aimed, at the very minimum, to help ensure Lewis would be present for the birth of his child.

In the days before the surrender, George had arranged an interview for Lew "with one of Swedish national TV's heaviest news-anchors."<sup>1</sup> Immediately following Lew's arrest George wrote to exile Bill Schiller in Stockholm, who now held the reins of Up From Exile's daily administration, asking him to obtain a copy of that footage if possible. The cost to acquire news footage shot by the U.S. networks was prohibitively expensive, George explained. What's remarkable about this letter is George's ebullient tone, which anticipates much of the same language used by Tod in his initial letter a few days later to Lew in the stockade, quoted above. George glowingly describes the surrender to his resister comrade as "an important national event," from which he confidently predicts "we can build a successful campaign."

Bill Schiller replied that the Swedish TV footage was indeed available. And George, in his follow-up letter, inserted "a check to cover the estimated cost." Then, assuming a didactic tone, George enumerated detailed instructions on the steps Schiller must now undertake to keep Lewis' case before the Swedish public. With Fia already back home, Bill was to call a press conference in which "the essential components should be:

- 1) Fia.
- 2) Olaf Palme [the Swedish Prime Minister] if possible. Other elected officials if Palme gives Fia a turn down.
- 3) A high ranking officer from the Swedish section of Amnesty International.
- 4) One or two prominent Swedes. Peter Weiss and/or Wilhelm Moberg... are known in America.

5) Two or three resisters. Yourself and Charlie Rogle would be best. Leftist rhetoric must be avoided.

George goes on to specify which hotel to use for the occasion, the Sheraton or the Strand, what funds should be used to pay for it, and lists the media organizations who should be invited. Bill must also check with a representative of one of the U.S. networks about “the best time... for TV viewing the same day in the States.” As for the content, George is equally detailed:

a) A focus of Fia as the grief-stricken wife and mother-to-be. With Lewis in the stockade, she can’t afford to have the baby in the U.S., and she should detail the torment she is suffering over the fear the baby will be born with Lew still being held by the military.

b) A second focus should emphasize the resisters themselves that hundreds of GIs have returned over the past five years, nearly all of them without attention directed to their cases. Lew is representative of them, and of all the remaining resisters in Sweden and elsewhere. We must convey that we will not allow the military to railroad him to Leavenworth without a fight. The overall demand should be for a no-strings amnesty and that Lew be released with an honorable discharge.<sup>2</sup>

After having intoned the sacred manta embodying our irreducible demands, George closes with a postscript reminding Bill to be sure to contact the wire services. Overall, the letter reads as if George had become a near perfect clone of Tod or myself, mimicking the stage directions for a publicity grabbing political show a la Safe Return. And while George, were he physically on the scene in Stockholm, had the chops himself to pull off such an event, this was clearly not a talent that translated long distance to a neophyte through a list of instructions. I don’t think anything came of it. If Bill Schiller carried out his mission, I do not find in the files the news clips that George asked him to send. As for the footage from Swedish TV, I have no

reason to believe it was ever obtained, and, even if it had been, it went the way of all our schemes until some years later to represent our work on film.<sup>3</sup>

As George worked to strengthen Lewis' hand, he did not neglect rendering assistance to the other deserter test case then in progress, a point Tod makes clear in his next letter to Lewis. We had received word from our friend and supporter Al Reynolds, the former civilian contractor in Vietnam, and now a concrete engineer working of the World Trade Towers, that Dick Bucklin's court martial would begin at Ft. Carson, Colorado on January 7<sup>th</sup>. George, having been flown out to Ft. Carson at Safe Return's expense, Tod informed Lewis, "was the main witness for the defense. He spent nearly an hour on the stand and was able to make many statements concerning the issues of resistance and amnesty."

Dick Bucklin himself, from George's description, was "anemic to the point of near collapse. Evidently he's been in solitary for nearly all his confinement to date." To justify that decision the Army claimed that Bucklin was in danger from Vietnam veterans imprisoned in the same facility, a pretext George dismissed as unlikely. Certainly it demanded an excess of credulity in early 1974 to imagine that a veteran returned from Vietnam, but still on active duty and himself behind bars, remained gung ho enough about the war to care much about the antiwar position of a fellow GI. So George was rightly perplexed by the defense's failure in not making "more of an issue... about this confinement." But it was the severity of Bucklin's fifteen months sentence for desertion that left the most disturbing impression.

Naturally we were greatly concerned with how, if Lewis' case came to trial, a mounting probability, this verdict would influence the outcome. Was this a signal, despite the growing trend throughout the country to put the war behind us, that the Pentagon was determined to demand stockade or jail time for the thousands of absent soldiers now trickling back to military



control since the withdrawal of U.S. troops from Indochina? Or would only those who came back in defiance of military authority be subjected, like Bucklin and, now, our latest two clients at Ft. Dix, to the most repressive punishments, not for the purposes of maintaining discipline in what was now a peace time, all-volunteer force, but as a petty act of institutional retribution against those who dared to resist?

Tod was quick to allay what might reasonably be Lewis' mounting fears over this lacerating news, acknowledging that, while "it was very bad about Dick," he felt the case had been mishandled by the sponsoring groups. As "for your and Eddie's situation," Tod hesitated to generalize about the implications. He took the middle ground arguing that the military would be in a less comfortable position "to press your case." Some of this was bedside manner, no doubt, but there's no evidence in the record to suggest we had lost confidence in our chances of providing Lew and Eddie with some measure of protection greater than had been mounted for Dick Bucklin. And besides, our relentless zeal and the pace of our activities left no room for pessimism to fester.

As always we were moving ahead. Tod told Lewis that the FORA press conference in Philadelphia where Abe Simon played an active role "had coverage from the local CBS affiliate, NY Times (feature story), Phila. Eve. Bulletin, Washington Post and a couple of community weeklies." This coverage Tod characterized as "pretty good," so nonchalant had we become about our ability to harness media attention to our actions. I regret that I cannot confirm these "pretty good" results, since I have not found in particular a copy of that *feature story* in the *Times*. And while it is late in the narrative I cannot fail to remark here that, despite my many hours of pouring over the record, not finding this or that source I have seen somewhere referred to, doesn't mean it's not there. My emphasis has been on following the trail of events as narrated

in our voluminous incoming and outgoing correspondence. I have not neglected other documents, but there are boxes I suspect I shall never have an opportunity to scrupulously examine before this work is completed.

The one immediate issue Tod and his co-defense counsel Harold Weiner were eager to resolve quickly, through legal action if necessary, was to ensure that the Army not subject Lewis to the isolation imposed on Dick Bucklin, and to force without further delay Lewis' release into the stockade's general population. This matter was further complicated a week later when the Army demanded that Lewis perform "extra duty," and slapped him in solitary when he refused.

In other business we were still attempting to mop up Tom Michaud's case, urgently seeking his whereabouts, by then unknown to us. The legal counsel of the ACLU, Marvin Karpatkin, who had brought Tommy's unsuccessful case before the military's discharge review board, informed us that the appeal period for that decision would run in twenty-five days if Michaud failed to respond. At the eleventh hour Tod had been able to track down Tommy's sister-in-law, Debbie, who wrote that both Tom and his brother "were involved in a timber project in Santa Cruz." If Debbie could get Tom to sign and immediately return the form enclosed by Tod, it was Karpatkin's opinion that "we will eventually prevail," an outcome, however, that I am unable to confirm.

John Herndon also reentered the conversation in the form of the paperback edition of Jim Reston's book, and Tod's suggestion that we ride the book's distribution with "one more go-round with [Jim's] speaking brochure." This arrangement was not a real income producer for Safe Return, but it offered Jim a way to promote his book and to extend amnesty's message, as at Cornell University, one of the bookings the mailing would return, and for a decent \$600 fee.

From even deeper in the past, long predating our involvement with John Herndon, came a truly out-of-the blue communiqué from K. Barton Osborne, a former spook turned counter-spook who delivered explosive testimony at our war crimes finale in late 1971 when we were still constituted as CCI.<sup>4</sup> It was there, coincidentally, that we first came into contact with James Reston, Jr. I suspect our recent blip of visibility in the media had prompted Osborne to reconnect, and update us on a conference his group of CIA watchdogs was hosting to expose and condemn the on-going excesses of the American intelligence community.

As oft-stated in this work, such forms of anti-establishment agitation, in which the amnesty movement played its part, sustained and extended the antiwar and radical political cultures through the Seventies, and into the early Eighties. As to where one might claim that activist agitation actually bore on modifications to institutional thinking of policy during this period is more difficult to measure. But I can cite two small examples from our own files of how history's forward motion steadily dogs the laggard wheels of politics, with amnesty as a case in point.

It was about this time that we received a copy of a *Resolution on Amnesty* from the American Jewish Congress, a very mainstream special interest entity, albeit in that time essentially liberal. When the resolution came to us, it was already six month old, and in all probability had finally found its way because our current cause celeb involved a resister who was himself Jewish. While the document nowhere refers directly to any past or present Safe Return activity, I would argue that our influence can be demonstrated by the particularly strong wording with which the Jewish body rejected "any distinction between draft evasion and desertion... [which] would tend to discriminate against disadvantaged groups." The statement further expressed unambiguous disapproval of all "proposals for amnesty conditioned upon some form

of alternative service... [which] would necessarily prolong the divisive debate engendered by the Vietnam War.” The true alternative, the organization insisted, was “a complete *forgetting* of the past in the interest of reconciliation.” Few other groups of its type or national stature saw the amnesty issue as clearly and compassionately as the American Jewish Congress.

A second example reveals how the rising volume of the amnesty debate implicitly led to policy changes around less-than-honorable discharges. Several bad discharge cases had been subjected to challenge by the ACLU’s Military Rights Project. And a memo from Henry Schwarzschild bore news of three promising decisions to limit military prerogatives in the discharge process. First Henry outlined a ruling by the U.S. Court of Appeals prohibiting public employers from discriminating in hiring veterans with other-than-honorable discharges. Next was a decision by the Equal Opportunity Commission ruling that the St. Louis Fire Department, in requiring honorable discharges from its applicants, in and of itself constituted racial discrimination. This was a local decision with potential for national reach as a valuable precedent given that such commissions operated everywhere. And lastly Henry’s memo described a ruling of the U.S. District Court in Washington which “held that the military may not give less-than-honorable discharges to GIs on the mere suspicion or accusation of drug use... without due process and a fair hearing.” These were not earth shaking policy changes, but they recognized the judicial necessity of sparking from the outside reforms much resisted by the old bulls at the Pentagon. These decisions, as well as internal pressures for change in an Army of post-Sixties volunteers, gradually eroded the drum head traditions of military discipline, and dampened the regressive and discriminatory impact that the existing discharge system had on the civilian labor market.

While the courts and a regulatory agency like the Equal Opportunity Commission were nipping a few rough edges from the government's recalcitrance to take amnesty more seriously, one U.S. Senator described for us forthrightly why politicians and lawmakers like him were dragging their feet. In his letter to Safe Return Senator Richard Schweiker of Pennsylvania explained that, while he had opposed the war, he "could not support retroactive amnesty across the board. Our system of government," he argued, "couldn't exist if we accepted selective obedience to the law."

Schweiker here, of course, turns a thorny political question into an academic one, being either naive or disingenuous. It's not that the potential political costs of promoting amnesty for most politicians could be disputed. But the Pentagon operated under no such restraints to treat in any consistent or systematic way the acts of rebellion and disaffection which swelled its ranks. There's an article in the Uniform Code of Military Justice which trumps all others, and permit commanders of the armed forces great latitude in rulings on the basis of 'military necessity,' even where such rulings contradict other sections of its judicial code. And so it was not an improvisational rarity when, in early February, the Ft. Dix commander found it in the Army's interest to ignore Schweiker's principle of "selective obedience to the law," and sent Eddie McNally home with a bad conduct discharge, while choosing to keep Lewis Simon in confinement, and headed for a military courtroom.

The weeks preceding McNally's release were as hectic as any I can remember during my decade of full time organizing. By the last day in January when I again wrote Lewis, we had no inkling of the course McNally's case would take. The tone of my note was upbeat, and slightly playful. The only information unrelated to the struggle was a paragraph describing how Marcel Ophuls had come to our door on a second shoot with Safe Return for his latest documentary

treating the Vietnam War, a return visit baited, I can reasonably deduce, by another recent turn in the media spotlight for our group. I supposed Lewis, undoubtedly well aware of the film maker's celebrated epic on the Holocaust, *The Sorrow and the Pity*, might be tickled to hear that Ophuls "did a piece with me on my personal transformation, and with Eddie and Tod about SR and their experiences." I have never seen what one Internet site referred to as "Ophuls' troubled film," and strongly suspect that whatever footage eventually threaded through the old Steenbeck editing consol did not include images of yours truly and comrades.

I congratulated Lewis on the very credible sketch he'd sent depicting the inside of his solitary cell. It is drawn by taking in the room while Lewis is lying on his cot. From the picture's lower margin the prisoner's two legs extend, with one foot partially covering the USA insignia [A for Army] machine embroidered on his military issue wool blanket. The scene then widens to embrace the cell's exposed sink and privy, two boots akimbo on the cold tiled floor, a corner of a foot locker and the heavy steel door that confined him. "There's definitely a career for you in Jailhouse art," I quipped, as I likened his drawing to "Van Gogh's... room in the 'insane asylum,' or perhaps a compartment on the Orient Express." I must have been comparing Lew's space favorably to the orange crate compartment Ann and I had shared during our recent trip on the Montrealer.

And even though Lew was in solitary confinement in an Army stockade, I could see "no call for gloom or pessimism" - an admission perhaps of having experienced the opposite with our prior cases - and therefore, apparently no impulse to shore up Lew's spirits, even under those awful circumstances. I recall well that I felt no such confidence in Eddie McNally. Intuitively I must have sensed that Lew's stubborn anti-authoritarianism and the self-reliance he had demonstrated as an exile would make him dig in and defy the Army's efforts to demoralize and

break him. How absurd, I commented, drifting into abstraction, that the Army found Safe Return's assault so threatening that Lew was being singled out as "the deserter personified," all the more ironic since "that's just what we're saying."

My own spirits were clearly buoyed "This time, "I assured Lew, "we are better, incredibly better prepared to battle the Army," and, in fact, the support we had begun to mobilize was at a higher level than anything we had achieved to date. In evidence I proudly displayed before Lew that: Tod, through the good offices of Ramsey Clark, was having dinner with Telford Taylor, the well-known prosecutor of the World War II Nuremberg trials and critic of the Vietnam War, and would ask him to join the defense teams; Paul O' Dwyer, a fiery left-liberal New York lawyer and politician, and the long shot candidate for U.S. Senate on whose behalf I canvassed in the Long Island suburbs in uniform just weeks before departing for Vietnam, had agreed to file a brief on a motion to dismiss all charges. Lastly, Lew's Bayside, Queens' Congressman, Ben Rosenthal "is currently writing Secretary [of the Army] Calloway to vigorously protest the Army's harassment of you, your confinement and the absurd charge of 'apprehension.'"

The nature of that complaint appears in the letter we mailed to our supporters, dated February 1<sup>st</sup>, amplifying the alarm to spur them to action.

"Vocal support for Lew and Eddie becomes increasingly important in light of revelations of their mistreatment in the Ft. Dix stockade. Besides the usual petty harassment, Lew has been written up for such 'offenses' as reading a book, or shoes not facing in the same direction [boots akimbo!]. In addition attorneys found in Lew's military file a 'Death Notice' on an official 'deserter bounty form.' On one side was a newspaper photograph of Lew and Eddie, and next to it

was pasted the heading from an obituary column. Although this file has been circulated from command to command within the Army, the Pentagon refuses to investigate its source and meaning, nor will they explain why commanders who saw it didn't remove it from the file.

The death notice provides a clear picture of how the Army command views Lew and Eddie, and their surrender. They're planning to throw the book at them, and have dropped even the pretense of a fair trial.

Clearly we had taken umbrage at the placement of the so-called 'Death Notice,' in Lew's personnel file. The true significance we assigned to this bizarre discovery is obviously exaggerated in our action letter. It seems likely this was a prank by some clerk who had access to such files, but the larger question of why the command could not be pressured to explain, or even regret, its occurrence was what really frustrated us. In retrospect it is plausible to suggest that rhetorical claims from the Left about the utter disintegration of command authority extended to every vestige of postwar management of the rank and file GIs. These remnants of a defunct conscription system marking time during the period of transition to the All Volunteer Force would have been masters of the art of subterfuge and passive resistance, any given soldier an operator like Joseph Heller's PFC Wintergreen.

A priority more objectively urgent than forcing a response on the Death Notice was to prevent the Army from pursuing its "absurd" claim that Lew and Eddie had been "apprehended," which, in legal terms, could transform a charge of extended absence into one of desertion. To prove desertion it was necessary to establish a lack of intent to return to military control. If an AWOL soldier voluntarily surrendered, or could prove he intended to do so, then a charge of desertion could be preemptively challenged. Addressing this concern required a bit of legal



maneuvering on our part by assembling notarized affidavits from eye witnesses at the surrender to be submitted at the Army's Article 32 hearing, the military equivalent of an arraignment.

I executed my own affidavit, recounting what I had observed during the Home Coming party at the Village Gate. I noted how, after the two resisters spoke about their reasons for fleeing the Army, Tod invited "any police officers present... to identify themselves so Simon and McNally could surrender to them." One man who I described in my statement as "tall, white haired and red-faced," did admit he was a New York City cop, "but refused to participate in the arrest." He told Tod "that the FBI waiting outside would handle that." It's very likely, given the indisputable evidence published by the *Times* that Lew and Eddie were returning voluntarily to military control, that the Army never seriously entertained sticking with the charge of desertion, and was engaged in a legal chess match to intimidate our clients and inconvenience our defense wherever they could. Through January and into February, there would be a succession of dirty tricks and obstructionist actions, those described above and others practiced by the Ft. Dix stockade commander and the Army's Judge Advocate General's office which would prosecute the case.

Perhaps the most annoying tactic the Ft. Dix command adopted to disturb Safe Return's defense efforts was the disruption of our ability to communicate effectively with our clients. We had filed, through our military co-counsel, Captain Brown, the necessary paperwork to credential members of our staff as attorney's assistants who could consult personally with Lew and Eddie on defense team business. In this way, we could divide up the not enviable duty of traveling by bus to Wrightstown, NJ to maintain physical contact with our clients for the sake of everyone's morale, and relieve Tod of the sole responsibility for such visits. On February 3<sup>rd</sup>, despite the

presence of their names on an approved list of visitors, Sailor John McGarrity and Eddie Sowders were denied their right to meet with Eddie McNally.

When Tod complained, the Army prosecutor told him the denial was at McNally's request. To this day, given the gap-ridden record from which I have attempted to reconstruct the details of our brief fling with Ed McNally, I cannot definitively conclude one way or another if McNally copped a deal with the Army in exchange for cutting, virtually repudiating, his ties with Safe Return, thus jettisoning his role as a test case resister. It was in character, certainly, that the street-wise hustler and former junkie would make every apparent accommodation to ingratiate himself with the sponsor or authority under whose control he found himself, voluntarily or otherwise, whatever might best advance his interests. Quite obviously it was a case of *otherwise* that defined his immediate circumstances.

I had realized from the start that Eddie McNally was the least politicized of our resister clients. Even John Herndon, no less an opportunist and hustler than McNally, was genuinely capable of viewing his private victimhood in the context of antiwar resistance. McNally only gave lip service to the resistance narrative, adapting to the role he understood that Safe Return expected of him. Joining McNally's case to Lewis' never had my deep support, and I can only produce in evidence a strong emotional memory of distrusting McNally from the first moment I met him. I have found no source from which to reconstruct the arguments for who favored or who opposed the decision to add McNally to this challenge. It's quite possible that, personal feelings aside, I even supported his inclusion on principled grounds, given our broad definition of deserters as resisters, and also in the hope that McNally's Vietnam service would somehow benefit Lewis' chances. This was likely the contradiction our whole staff was embracing, and, certainly, once the decision was made, there was no pulling back.

On January 31<sup>st</sup>, several days before the refusal to see Sowders and McGarrity, Tod was at Ft. Dix attending McNally's Article 32 arraignment hearing. McNally would later attest that, during the hearing, "I requested... my civilian attorneys to arrange for a psychiatric examination, as I was feeling quite upset with my confinement." That affidavit - executed almost a month later, the purpose for which I will take up below - establishes key dates and, along with a three-page evaluation by a psychiatrist, constitutes the documentary fragments that mark the trail McNally covered to gain his rapid release.

Based on his interview, by Dr. Marvin Nierenberg, a practicing psychiatrist in New York, and also, I suppose, a Safe Return supporter serving pro bono, outlines Eddie McNally's personal history. Nierenberg suggests that "minimal parental supervision contributed to an early established pattern of poor school performance, scrapes with the law and involvement with drugs." These "behavior problems" were then exacerbated through military service, especially "Vietnam... where he began to use heroin intravenously."

On coming home, McNally spent three months in the stockade as punishment for his initial AWOL, a period of confinement he found "virtually unbearable." This then "impulse-ridden young man... promptly went AWOL again, this time for what was to be a period of four years... addicted to many drugs... his life pattern revolved around obtaining and using them."

A slipped disk in McNally's back proved providential. Undergoing surgery, and unable during convalescence to score a fix, he eventually kicked his habit aided by a successful stint in a rehab facility. McNally spent the last year of his underground existence clean, and, apparently, productive. He himself worked as a drug counselor, passed his GED, won a scholarship and enrolled in Old Westbury College, and fell in love, the principal impulse behind his desire to

resolve and sever his military attachment. Now McNally was back in the slammer, having, as our shrink put it, “the familiar feeling of dread and apprehension at being confined.”

Nierenberg’s psychological profile of McNally is fascinating, and I found his description of McNally’s talent for the verbal snow job patently consistent with my own exposure to the man.

PFC McNally is a pale slender mustached young man with dark, tousled hair whose marked degree of anxiety is immediately apparent. His facial expression is one of fear and this is emphasized at the slightest change in his surroundings... some sort of noise... in an adjacent room. At times such as these, his otherwise incessant stream of emphatic conversation stops abruptly as he fearfully eyes the source of the unexpected noise or muted conversation.

“Incessant stream of emphatic conversation,” sounds very much like a diagnosable personality trait. And fair deuce. But the clincher in this evaluation is the doctor’s observation that McNally was “filled with regrets at having turned himself in because of the intense fear of having his freedom of movement restricted... It is not uncommon,” Nierenberg warned, “for an addiction-prone person... to flourish under a fortunate set of circumstances... [then] experience a setback when cut-off from the many supportive relationships which contributed to his rehabilitation.” Nierenberg’s prescription for treating McNally’s mental health issues was to free him. “The more promptly this young man could be returned to the environment in which he has made such notable gains, the more likely... these gains will be consolidated and built upon.”

The question I cannot answer is, did the Army, based on their copy of this evaluation, exploit McNally’s “regrets,” dangling as the price for his freedom that he distance himself from Safe Return? This was certainly the way I saw it at the time, believing strongly that McNally

sold us out. For well over a week after turning away his visitors from Safe Return, and until February 13<sup>th</sup>, when a pro-forma court martial found him guilty of unauthorized absence, ordered a Bad Conduct Discharge and then released him, all communications between McNally and his family, and Safe Return had ceased.

I don't know how we re-established contact with Eddie McNally. But by February 26<sup>th</sup> we had somehow gotten him to sign an affidavit in which we were alleging 'command interference' with the defense of both our test case resisters. Whether or not ill feelings surfaced during that encounter with McNally, I don't recall. Feelings were raw on our side, I am certain, and not just mine. By then, of course, Judy Miller's cover story in the *Progressive*, in which Eddie was prominently featured, had by now appeared. And I doubt it was the kind of attention McNally could easily ignore. Where better to take a bow than where such publicity was valued?

So, it's possible we also chose to perpetuate a fiction, allowing Eddie the dignity to momentarily relieve his brief performance as an antiwar GI. This mutual accommodation was a cheap way for McNally to repay Safe Return, and, at very least, attain the same level of closure with us that he'd achieved with the Army: no strings attached. No matter how McNally's petty betrayal was viewed at Safe Return, I don't think we would have openly remonstrated about it. After all, we were the ones who had chosen to politicize desertion as resistance, and we had certainly come to understand by this stage that those for whom we advocated varied from one subject to another in their fit with our agenda.

While political consciousness was hardly static among antiwar activists, the intensity with which we were committed to our radical identities, and not ideology alone, operated within a framework where middle ground was a lonely space. During Vietnam no one who was or who wished to appear a true antiwar radical could have been both a friend to the Movement, and a

friend to the Pentagon. McNally did what none of our other deserter clients would ever do upon surrender despite the pressures and temptations they may have faced. He cozied up to the Army to get the same terms of release we anticipated for him, given his Vietnam service, but could not guarantee. Political judgments and wounded feelings aside, given his social and psychological profiles, who could blame him?

Finally, under oath in late February, Eddie McNally attested to the sequence of events leading to his release, beginning with the Article 32 Hearing on January 29<sup>th</sup>. Four days later, McNally says, he was told by military defense counsel Captain Brown that the psychiatrist would visit him on February 3<sup>rd</sup>. That same day, states McNally, “Staff Sgt. Twaites took me aside and told me that two visitors who purported to be from my lawyer’s office had been denied entrance.”

It was very crowded at the stockade that Sunday. Before Sgt. Twaites took him aside, McNally states that he was already visiting “with my fiancé, Robin and my mother for an hour and a half.” McNally had also undergone a psychiatric examination that same morning. As to his refusing - the Army’s version - to also see McGarrity and Sowders, the agency for that decision it is clouded by McNally’s use of the passive construction, ‘had been denied,’ which finesses the question, “by whom?” Certainly not Sgt. Twaites, who was merely the messenger.

The key to Safe Return’s interest in this affidavit was the colorful anecdote McNally went on to narrate of being contacted by the Army the week after his release. For McNally, the exercise is another case of ‘kiss and tell’:

On February 21, 1974 at about 3:30 pm, Lt. Colonel Harleston called me at my sister’s house in Farmingdale, L.I., N.Y. He asked how I was doing and stated that he had a copy of the attorneys’ letter to General Prugh.<sup>5</sup> He proceeded to

quote a paragraph from that letter to me. Then, he said he wanted me to do him a favor. He asked me to send him a letter as soon as possible in which I stated that 1) I was not treated differently from any other stockade prisoner, and 2) that I had told him I didn't want any visitors other than my family on Sundays. With that, he closed with friendly well-wishing.

And here McNally unmasks the active role he may have played in rejecting the meeting with Sowders and McGarrity, which above, he has seemingly denied. McNally reiterates that his "only concern" was to protect the time he could visit with his fiancée and family. In this I read him to imply that he did the deed but it was not aimed at Safe Return. Given McNally's lack of candor, it was impossible for us to prove otherwise. We could not therefore advance our complaints about command interference with the defense that we put before Maj. General Prugh, the Army's top lawyer, by referring further to this specific point in his case.

What sticks, however, is the stain of unethical manipulation that the Army was able to practice with virtual impunity, evidenced by Colonel Harleston's boldfaced request that McNally dissemble about the nature of his confinement, and possibly perjure himself. Harleston's claim that McNally "was not treated differently" is prima facie evidence that the opposite was true. Certainly no other prisoner at Ft. Dix ever came into its stockade – with the possible exception of John Herndon - on the wave of the provocative publicity that accompanied Eddie's and Lew's surrender. Unlike John, however, and perhaps in evidence of how the Army increasingly overcompensated to save face in its shameful disintegrated state, both Lew and Ed as the latest poster boys of defiance to military authority had been subjected to stressful forms of confinement and harassment.

But we had at least forced a response from ‘higher, higher’ up the chain of command, from Maj. General Prugh, who no doubt was annoyed at having to respond to claims about improprieties in the military’s judicial process. It was not just complaints from the “attorneys” piling up on the desk of the Army’s top lawyer Maj. General Prugh, but letters from our supporters, firmly stating their disapproval of the treatment of our resisters clients, and written politely, without political rhetoric by educated people. Responses must be rendered.

Prugh also had cause to make some underling feel his displeasure. And so, Lt. Colonel Harleston, the Ft. Dix stockade commander, was likely feeling the smoke, and that would mean his attention must be abruptly diverted to the potentially dangerous task of filing a report. A failure to expeditiously contain the flap might go against someone hoping to make full colonel. That’s the military in a nutshell, a treacherous culture which eats its own for the good of the service, sheltered behind an ad hoc standard of justice adapted for its own convenience and in pursuit of its increasingly sordid mission in the millennial present. The corporation in uniform; the State on wheels. Plus ca change...

With Eddie McNally out of the picture - good riddance undoubtedly being my own response - we could precede with our strategy to marry Lew Simon’s more exemplary resistance to the impossible demands we all - including Lewis - defended politically with uncompromising zeal. Preparations for Lew’s court martial now geared up in earnest. Much of the attention at Safe Return was focused on the legal wrangling between our attorneys - Tod and Hal - and the Army counterparts at Ft. Dix who would prosecute Lew’s case. There’s no doubt that developments at Dix were being monitored, and to some extent directed, from high up in the military bureaucracy; the record will later document that certainly the office of the Secretary of the Army, at a perch somewhat higher from Prugh’s, was also fully appraised.



As legal strategy, our defense had two components. There was the matter of the charge of desertion, which Hal Weiner, who had worked with us on John Herndon's case, would attempt to contest and mitigate. The second component was our commitment to conduct a political trial that would further tarnish the Vietnam War in the public mind and annals, and, by extension exonerate and honor the resistance to it. The Army's objective was to prevent that political trial from ever happening. Over the remainder of February, and well into March, this hugely unequal contest played out. Every initiative on our part was parried by the Army lawyers, but we fought hard for our goal to the end. I suppose, if nothing else, we retained a brand of idealism peculiarly American, distrust of power but faith in ultimate justice. Moreover we believed we were entitled to our day in court.

At the office, I can justly claim, the whole Safe Return crew was working with a single mindset. We harnessed all our own improvisational talents to blaise the way forward. We prodded our networks to keep sending written complaints and inquiries up the chain of command. Every dime at our disposal was in service of a desperate time table to influence and moderate the outcome of Lew's trial. We worked the mails; we worked the donors; we worked the phones; we worked the politicians; we worked the press. Eddie McNally had his spot light in the *Progressive* article, but we would find a much larger stage to showcase Lew Simon's - and therefore amnesty's - claims for public caring. Thanks to a sympathetic contact in the *Times* editorial department we had placed an Op Ed in the paper on February 7<sup>th</sup> written by Lewis from his cell. It was a rehash of the surrender statement amended by a sober assessment of the unpleasant prospects that attended his determined stand. His words were poignant and direct:

I know only too well the military's brand of "justice." In advance of any hearing, I have been adjudged guilty; all that's left is the facade of a trial and the sentencing. The same military and civilian commanders who conducted the war in Vietnam are now prosecuting me...

Unlike the *Progressive* with its limited, largely pro-amnesty subscriber base, the *Times'* editorial pages reached tens of thousands, and were widely read by powerful opinion makers, like members of the Nixon Administration and of the Congress, the two key policy-making audiences we had targeted for pressure. Being in the *Times* didn't mean the message would necessarily change any individual's mind, least of all those for whom opposition to amnesty for deserters represented their unexamined and conventional wisdom. Still, however transient, an Op Ed in the *Times* could not be totally ignored; it was a score for our side.

Another avenue quickly opened for expanding the visibility of Lew's case when a letter arrived from Henry Schwarzschild confirming that he had "taken the liberty of suggesting" Ed Sowders as a witness for hearings on amnesty by a House Judiciary subcommittee, now scheduled for early March. No one at Safe Return opposed such a move - far from it. But, whether or not Ed Sowders would testify, it was quickly agreed that the witness whose testimony we would seek to promote at those hearings above all others was sitting in the Ft. Dix stockade.

Henry also mentioned that NCUUA would "sponsor" an Amnesty Information Center during the three days of hearings. And in its separate announcement NCUUA outlined the specifics of the role the coalition hoped to play while in Washington. Their Center would serve as a meeting place for activists and a clearing house for distribution of amnesty related materials, as well as a resource for fielding inquiries from the media and congressional staff members. They would kick-off their activities with "a cocktail reception honoring potential amnesty

recipients,” and stage a series of “outdoor vigils.” NCUUA would also announce “several campaigns for the coming months,” including a vaguely sketched mass action still under wraps that would involve “representative individuals... of many categories” of resisters. It seemed that Jerry Olson and his coalition collaborators were finally thinking creatively, and moving their considerable forces into position to occupy real space in the amnesty movement.

But what would that amnesty movement look like, I pondered in my late February letter to Lewis when, as the hearings suggested to me, “the entire issue was beginning to move within the current of mainstream Liberal politics?” Would NCUUA radicals be able to restrain their institutional players from abandoning our demand for an all inclusive no-strings solution? If the liberals “sold out immediately,” abandoned deserters, placed conditions on repatriation for draft evaders, Safe Return’s “course will be clear;” there would remain ample ground in the body politic to push back credibly around our “ideals.” If, on the other hand, NCUUA held its liberal allies in check, Safe Return might be “boxed in.” These were “long range considerations,” I told Lewis, but clearly I was, as always, weighing the contingencies about ‘Whither Safe Return and not to mention myself as one of the project’s principal Avatars?’

The hearings would have to play out before we could know how they might affect our on-going work. We nonetheless looked upon Kastenmeier’s initiative with characteristic contempt, in my words as “a shallow repeat of what Kennedy did two years ago, with the major distinction that these are now Amnesty Hearings, not some backdoor peep show through the veil of a moribund draft.” Here, I predicted, was “a legit showcase for the accommodation... already worked out behind the scenes.” Seven bills and two resolutions would be considered, among which only Bella Abzug’s was openly friendly to resisters. The most prominent witnesses, like Secretary of Defense Melvin Laird, vehemently opposed anything that even smacked of

association with the term ‘amnesty.’ Such men would shill, at best, for some version of the punitive legislation introduced by Senator Taft, demanding that resisters ‘earn’ their ‘immunity,’ while posturing magnanimously and giving lip service to their high toned prayer for “healing the hurt this nation has suffered.”<sup>6</sup>

Quite naturally we did endorse the strategic value of whatever national publicity the hearings might generate to increase name recognition for amnesty as a hot topic. And toward that end, we adopted the tactic, as I conveyed to Lewis, “to persuade the House Judiciary to call at least one real witness - you!,” thus seeking a dramatic forum for a flesh and blood soldier about to be tried for his act of political resistance to the recent war now much regretted by most of his fellow citizens as polls consistently showed. Our only chance was to get one of Kastenmeier’s congressional colleagues to request that he subpoena Lew Simon as an official witness.

I reported to Lewis that “we met with Bella last week,” and that Abe, his father, “was very effective.” Lewis would also be pleased to hear that “Abzug was genuinely outraged about the death notice and your treatment generally. Her staff is now translating that outrage into some form of practical response to the Department of Army,” another irritant we knew some brass hat would have to scratch. And we recruited Bella with several other Congressmen - here I mention Ben Rosenthal and Robert Drinin, S.J. of Boston - to make our case to Kastenmeier for Lew’s appearance before the committee. The major hurdle before us, as Lew well knew, remained the impending, as yet unscheduled, court martial. And while I conceded it was “gratifying that Eddie got off without any time,” I was equally certain we might still achieve “that type (or a better) solution for you.”

My disclaimer was undoubtedly sincere, although it's impossible to remember if, with February passing quickly, I already suspected the outcome for this case would be considerably less gratifying than Eddie's. Probably not. Inside the semi-liberated political culture we inhabited, we had become in our hearts an opposition of permanent 'struggle;' we seldom calculated the long shots. Betraying neither doubts nor fears, I closed my note to Lewis with a casual non sequitur about my plans to attend a matinee performance on the upcoming Saturday of Eugene O'Neill's *The Iceman Cometh*. There was something of a revival of O'Neill's plays on Broadway in the Seventies. I would see every one of them, but James Earl Jones in the role of Hickey in *Iceman* was a particularly memorable performance.

Lewis's uncomfortable circumstances notwithstanding, with the attention we had been able to attract to his case Safe Return's stock had risen considerably among groups and individuals not directly involved in our sectarian squabbles, but who had been apprised of them by our adversaries. Expression of friendly support came in from unexpected quarters. The director of Bernie Mazel's direct mail arm, Ken Coplun, wrote effusively of seeing "feature articles on Simon everywhere I go... I am elated for you in your success..." But the key moment of righteous vindication for both Tod and I came with a modest grant of \$200 from RESIST. An accompanying note from Boston-based left-wing financial guru, Bob Zevin, who sat on the project's funding committee, was refreshingly, albeit uncharacteristically candid coming as it did from such an inscrutable circle. "Your request has been before RESIST longer than any proposal in its seven year history. This was partly due to the confusion and turmoil which has been created in the Movement by your enemies."

Moreover both Ken Coplun and Bob Zevin were offering their professional services to help Safe Return improve its long term fiscal prospects. Coplun advised us to better manage our

internal contributor's list by moving donor names along with key bits on information on each to a computerized form of magnetic tape, a suggestion we were quick to adopt. He also requested a list of all our mailings to date, including the 100,000 piece mailing currently being assembled. "This would allow me," he said, "to see the extent to which Safe Return has delved into the A lists... most suitable to your program." For his part, Zevin proposed "to sit down with one or both of you to discuss fund raising approaches to some fifteen or twenty different foundations." Had we accepted, these were to be business arrangements, not freebies, contracted for with fees or commissions. Since we were stubbornly inclined to manage all fund raising in house, neither relationship would pan out. But the fact that Safe Return was now considered a viable client by a pair of major facilitators like Coplon's boss, Mazel and Zevin was what gave these developments their taste of considerable pride and vindication.

The date of Lew's court martial was finally set for the third week of March. By that time he would have already been in pre-trial confinement for three months. All of us at Safe Return, spurred by our legal team, were scrambling to keep pressure on the Army from every quarter where we might exert the slightest influence. As Movement activists we had never overlooked the usefulness of putting bodies on the street. On February 9<sup>th</sup> two buses chartered at the cost of \$303 left Manhattan for Wrightstown, N.J. with a number of stalwart Safe Return supporters on board. Two days later I reported to Lewis that "the demo on Saturday went well despite the snow which limited the turnout. We were permitted to distribute leaflets on base around the PX, and the reception [by GIs] was very encouraging."

I advised Lewis that I didn't think it was a good idea to have his wife, Fia, take the stand in his defense. I cited the "emotional strain," and that feared "she may not be able to restrain from attacking the jury (the very sight of them is a provocation). Let's discuss it further," I

suggested. In the meantime we were waiting for Lewis' own list of potential witnesses. The name Susan George had come up again at my recommendation for reasons I can no longer fathom. But Lewis was opposed on the grounds of her "class background," and, again, I am at a loss to interpret the argument on how that would have been detrimental to his chances, except to emphasize that our actions hinged on such questions in those days.

The petitioning drive for Kastenmeier to call Lew as a witness, the hearings now scheduled the week prior to the court martial, continued at a fevered pace. Typical of what Kastenmeier was receiving from Safe Return induced petitioners - one of hundreds - was the message from a Santa Barbara matron and grassroots amnesty activist named None' Redmond, who argued that "Lewis Simon be allowed to give his reasons for opposing the war...[whose] injustices continue even as we seek reconciliation with Hanoi." To former Senator Earnest Gruening, famous for opposing Lyndon Johnson's Gulf of Tonkin Resolution in 1964, Tod had written asking that he mention Lew in the statement he was composing for the subcommittee. Gruening replied that he had already submitted his statement in support of amnesty and could not amend it, but he fully agreed that Lewis should be called. Leaning heavily on his own Congressman, Abe Simon implored Ben Rosenthal to bring our request to Kastenmeier's "personal attention."

The fact that hearings were even convened was a measure of how far the amnesty debate had come from its radical origins within the antiwar movement. In the context of the political moment, however, Kastenmeier's ground breaking initiative was little more than a sideshow, given that the full House Judiciary Committee was already engaged in the preliminary investigations that would lead to Richard Nixon's eventual impeachment for criminal acts involving the break-in at offices of the Democratic National Committee in Washington's

Watergate complex. Nonetheless, when Kastenmeier, responding to the volume of appeals, finally agreed to certify Lew Simon as a witness, we were momentarily elated. But our victory was short lived. In our third issue of *Amnesty Report* we explained that, “when the Committee made a final request of Defense Secretary James Schlesinger to release Lew to testify, they were flatly refused. The Army’s Counsel concocted the lame excuse that Lew might prejudice his court martial by expressing his views before the House.”

In a letter to the *New York Times* a week before he was to be tried, Lew described how Kastenmeier had informed Secretary Schlesinger “that I could be considered... uniquely qualified to represent the views of American exiles.” In denying the request the Pentagon’s position was “that I might incriminate myself by doing so.” Lewis then bitterly observed that “the right to remain silent... can only be invoked by the defendant himself. The Defense Department does not have the prerogative of invoking this right for me against my own expressed desire. I see this as a hypocritical distortion... being used to infringe on my even more basic right of freedom of speech.” When the subcommittee balked at issuing a subpoena to force the Secretary’s hand, the matter of Lew’s potential testimony became a dead letter.

As for the hearings themselves, they evolved into an orgy of testimony on why amnesty ought not to be granted, certainly not without imposing “punitive” service, the term favored by the conservatives, or “alternative service,” the formulation preferred by the liberals. “Standing in for his son,” we recorded in *Amnesty Report*, “Abe Simon gave an eloquent account of Lew’s reasons for resisting the Vietnam War.” Beyond that our cause was almost totally ignored by “the unrepresentative nature of the other witnesses. Only one other war resister was called to testify during the three days of hearings.” Perhaps the sharpest blow to the dignity of the antiwar stance was delivered by the witness for the Department of Veterans Affairs, who exalted in the



fact that veterans serving throughout the armed forces as conscientious objectors in non-combat roles, albeit honorably, would be denied their veterans' benefits. And certainly the general consensus among the vast majority of witnesses held that the fate of deserters rested entirely with the military.

And now Lewis Simon's fate hung in the balance. Despite the well of public sympathy we had mobilized to support him, the leverage we had hoped to bring to bear on the Army to gain his freedom, or at least ameliorate the penalty he faced, confronted forces at Ft. Dix that were almost sadistically unbending. Every stratagem Tod and Hal Weiner devised for his defense was swatted away without pretense of fair play by the Judge Advocate trial counsel who cited rules of military law which brooked no challenge, given the narrow grounds on which the charges rested - Lew had either gone AWOL or he hadn't. Every witness we proposed who might offer a justification for Lew's decision to flee was denied in a flurry of legalese, as "per failure to comply with the provisions of paragraph 115 of the manual for Courts Martial," or with jargon of a similar flavor.

Having foregone the plan to reprieve the Nuremberg defense we had attempted in the trial of Tommy Michaud, Tod and Hal had nonetheless determined to defend Lewis on political grounds around the issue of conscience. They would also simultaneously file a series of motions to dismiss charges against Lewis based on command interference with "the confidentiality of his attorney-client relationship" by way of "surveillance of the accused's correspondence, telephone contents and other communications with civilian co-counsel," as Hal Weiner would allege in a letter to his opposite number on the prosecution, Captain Joseph Ippolitio. I don't recall - or find - that we had hard evidence of the wiring tapping, but there had been a rumor credibly conveyed from Sweden that the American Embassy had been watching Lewis closely and knew of his

plans to surrender. And certainly no member of Safe Return had found his visitation with Lewis at Ft. Dix uncluttered by a run-around of delays and credential challenges.

Nothing we attempted could either speed or prevent the inevitable day of judgment. It was set on the Army's inscrutable timetable for Monday, March 18, 1974. We had all assembled in the courtroom, the SR staff and attorneys, Lew's parents and his wife, and the one star witness whose testimony the military was willing to hear in defense of Lewis' resistance; once again we produced the former Attorney General Ramsey Clark.

To its credit, *The New York Times* followed this story till its bitter conclusion.<sup>7</sup> The court action was described in the paper with a couple of paragraphs, beginning with Tod's move to wave Lewis' right to a jury trial, electing instead "to have the case determined by the presiding officer." Thus, the jurors already in their places were immediately dismissed. Explaining his decision, Tod lodged an elegant protest, arguing that "this was not a jury of his peers. They were all career officers. They were not diverse. They're isolated in a community of uniform views. It was not a jury in the common law sense." This may have been the only occasion in which I witnessed Tod, the reluctant legal practitioner, draw from the knowledge of his advanced degree in jurisprudence. It was a principled stand against arbitrary justice, even if the point was moot in terms of the trial's military brand of legality. For the rest, the *Times* reported that,

Mr. Simon's lawyers spent most of the day in court arguing a series of motions to dismiss the trial. They argued that partly because of his pre-trial confinement, which they said had been unjustified, they had been unable to prepare his defense effectively. They said they had been denied access to certain witnesses and they maintained that command influence on the case denied Mr. Simon the right to fair and impartial trial. They also complained that Simon had

not been given a speedy trial. All the arguments were countered by Captain Ippolito and they were denied by [trial judge] Colonel Morrison.

Thus, the reporter's account of the defense presentation, though brief, offers the essential detail on its drift and content. But when it comes to describing the prosecution, we get only a single sentence dominated by the verbs "countered" and "denied," demonstrating with minimal eloquence the naked truth that military justice was most often merely pre-scripted and ceremonial. At Ft. Dix that day courtroom played like liturgical clockwork. There was nothing being tried here. What the rest of the world thought about the Vietnam War, including most Americans, had no echoes here. And, to the degree we had the slimmest appearance of a day in court resulted solely from the legal spin that Ramsey Clark was permitted to put before the proceedings.

Clark delivered, according to the *Times*, "an impassioned appeal for amnesty," and he recalled for the court that in the war protest trials of Dr. Benjamin Spock and the Rev. William Sloan Coffin during his tenure as Attorney General, he had insisted that the United States seek no jail sentences. "The Government need not be afraid of people who act their conscience," Mr. Clark said. "It needs all the people it has who act on conscience... otherwise the Government injures itself."

Lewis was less subtle in his own testimony, but more immediate and direct. He stood tall and was manly in the best sense as someone uncorrupted and true to himself. He made the best case for Ramsey Clark's theoretical appeal for judicial leniency by retracing all the steps that evolved into a state of mind and thinking that gave him no moral alternative but to take flight to exile and reject Vietnam. Tone deaf to all he heard, Morrison was economical and prosaic in the words he chose to preface and deliver his verdict. He declared simply that Lewis' absence had

been intentional, and that he had understood the consequences of his actions. And that being “troubled by his conscience... may be extenuating... [but] is not a defense.” Finally, and without dramatic pause, but with a lese majeste that typifies high ranking members of the military caste, Colonel Morrison dropped his blade and pronounced sentence of seven months at hard labor with a bad conduct discharge.

The *Times* reporter, a sympathetic man named Joseph Treaster, paints sparsely the unhappy scene that followed:

Mr. Simon’s Swedish wife who is five months pregnant burst into tears and pressed against an iron railing to clutch her husband. Mr. Simon’s mother dabbed at red eyes. His father, a World War II veteran clinched his jaw.

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2. I have summarized, and, in places, paraphrased from George Carrano's letter to Bill Schiller of January 10, 1974.
  3. "Nick Mazzuco: Biography of an Atomic Vet," a short documentary for Public Television by Richard Schmiechen and Michael Uhl; 1980.
  4. For an account of K. Barton Osborne's involvement with CCI, see my *Vietnam Awakening*.
  6. These were the very words Senator Robert Taft, Jr. delivered at the Kastenmeier hearings in March 1974.
  7. "Army Deserter Convicted As A.W.O.L. at Fort Dix: Man Who Came Back From Sweden to Dramatize Amnesty Issue Receives Sentence of 7 Months at Hard Labor," Joseph B. Teaster. *The New York Times*, March 19, 1974.