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CHAPTER VII: CONCLUSIONS AND RECOMMENDATIONS

The President's Clemency Program was, very broadly speaking, an effort to heal some of the wounds of the Vietnam era. The Presidential Proclamation gave a clear mandate to our Board and to the Departments of Defense and Justice to achieve that objective.

Inescapably, we must ask whether the clemency program did in fact carry out the President's mandate. How successfully did we implement the spirit of each of the President's six principles?

(1) The need for a program

(2) Clemency, Not Amnesty

(3) A Limited, not universal, program

(4) A program of definite, not indefinite length

(5) A case-by-case, not blanket, approach

(6) Conditional, not Unconditional clemency

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Earlier in this report, we have described what we and other agencies have done to implement these six principles. On the whole, we are confident that the program ~~had~~ reflected the spirit of the Presidential Proclamation which created it.

E. The Need for a Program

As requested by the President, the designated agencies did develop a program which dealt directly with the issue of reconciliation for draft resisters and military deserters. Therefore, the public need for a Presidential response to this issue, very clearly felt just one year ago, now no longer exists. The President's Clemency Program is not the answer that many would have chosen, but it has been widely accepted as a compromise. A recent survey of public opinion conducted by the Gallup Organizationin August, 1974, discovered that ___% of the American people approve of President Ford's Clemency program. (The others who offered opinions were almost equally divided between the ___% who thought he was too

generous and the ___% who thought he was not generous enough).* We are confident that the President's program has helped enable all Americans to put their war-engendered differences aside and live as friends and neighbors once again. The same Gallup Poll found that the overwhelming majority of Americans -- __% -- are now willing to accept clemency recipients into their communities on at least equal terms. We are strongly convinced that an unconditional amnesty would have achieved much less of a reconciliation among persons who had strong differences of opinion during the Vietnam War. In fact, such a policy might have exacerbated those differences.

The discussion of clemency or amnesty in the public forum has abated with surprising swiftness since the announcement of the program. It once was the constant subject of Congressional debate, newspaper editorials, and opinion polls. After the program started, discussion focused more on the details of the program than on the broader question of clemency versus amnesty. Today, the issue is virtually dormant. Whether this reflects positive acceptance, quiet acquiescence, or disinterest on the part of the public is a question which we cannot answer.

Part of the reasons for the diminished public interest in clemency may have been the low profile maintained by the other agencies and ourselves. We do wonder whether a higher profile might have led to an even greater public acceptance of the program. We believed, at first, that the same public which had shown such keen interest in the amnesty issue beforehand would be reasonably well informed about what was in the President's offer of clemency. During the late winter

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* Contrast this with a Gallup/Newsweek poll in ____, which found that only ____% favored a program of conditional clemency, with ____% favoring unconditional amnesty and _____% no program at all. The complete results of the recent Gallup Poll are included in Appendix ____.

weeks, we tried to focus more public interest on the program. As we traveled throughout the country to speak with local media and counseling organizations, we were boggled by the misconceptions we found. It was indeed the rare person who already knew of the eligibility of former servicemen with bad discharges because of desertion offenses--who constituted 100,000 of the 125,000 persons covered by the President's program. We also found that many people who originally had been critics of the program came away from our meetings as supporters, once their misconceptions had been corrected. Everyone was astonished to learn that, in the overall clemency program, there were three times as many applicants who were Vietnam veterns as there were Canadian exiles. Unfortunately, we suspect that a majority of Americans still misunderstand what the program offered, who was eligible, and what the typical clemency applicant was like.

On balance, we consider the program's very low profile from September through January to have been a mistake. We believe that the program could have been very popular with the American public. It also could have reached more eligible persons. Despite this, the need for a program has been satisfied, and the American people seem reasonably content with the program which evolved. Along the way, some of the wounds of the Vietnam Era may well have been healed.

Finally, the President's clemency program was not--and should not be interpreted as--a denigration of the sacrifices of those who served honorably or lost loved ones in the Vietnam conflict. We are particularly concerned about the employment opportunities of the 2,500,000 veterans who served in Vietnam and feelings of the estimated 250,000 parents, wives, brothers, sisters, and children of soldiers who lost their lives in Vietnam. These are individuals deserving of our utmost respect. We are confident that the President's clemency program did them no harm; we are equally confident that a program of unconditional amnesty would have led many of these people to believe, in good conscience, that their sacrifices had been downgraded.

Clemency, Not Amnesty

While it was never intended that the clemency program offer reparations or even a total restoration of status for all its applicants, it was intended that the program be "clement" and offer something of value to its applicants. Did applicants in fact receive anything of value?

Beyond question, applicants to the Department of Justice program received something of value. They are the only clemency recipients who will emerge with a clean record; once they complete their alternative service, their prosecutions will be dropped. Thus, their draft offenses should not affect their future opportunities to find jobs, housing and so forth. However, their clean record comes at some risk. If a fugitive draft resister returned from Canada and enrolled in the Justice program, he must complete his alternative service. If he does not, he could be subject to immediate prosecution for his draft offense and would not be allowed to return to Canada if he so chose.

Applicants to the Defense program were benfited primarily insofar as they immediately ended their fugitive status and avoided the risk of facing a court-martial and possible imprisonment. They immediately received Undesirable Discharges. (If he was one of 42 particularly meritorious cases, he received full entitlement to Veteran's Benefits). Although he can be held accountable for failure to complete alternative service, he is unlikely to be prosecuted for such a failure. For such a prosecution to succeed, it must be shown that he did not intend to do alternative service at the time he enrolled in the program--a subjective piece of evidence which is difficult to prove. If he does complete alternative service, he receives a Clemency Discharge to replace the undesirable discharge given him when he enrolled in the Defense program.

Almost none of the applicants to the Presidential Clemency Board were fugitives, the rare exception being the civilian who fled to avoid punishment after his conviction. As a result, the major benefit of the other two programs--putting an end to one's fugitive status--is of no consequence to our typical applicant. He had already settled his score with civilian or military authorities. He owed no

pardon, the highest symbolic Constitutional Act which the President could do on behalf of any of our applicants. Still, pardons result in no more than a partial restoration of an applicant's records and rights, blotting out neither the fact nor the record of conviction. Under present practice, no records are sealed. The benefits of a pardon lie in its restoration of the right to vote, hold office, hold trade licenses, and enjoy other rights described earlier. In A RECENT Dr. Pearman's survey of employer attitudes, DR. WILLIAM PEARMAN found that 41% of national and local employers would discriminate against a convicted draft offender who performed alternative service and received a pardon, versus 75% who would discriminate against him if he did not receive clemency./ Only 12% would refuse to consider hiring a former draft offender who earned his pardon, whereas 37% would refuse to hire him otherwise./ Local employers would discriminate against him much more than national employers.

/ The percentage who would discriminate against if he did no alternative service would be 57%.

/ The percentage who would refuse to consider hiring him if he did no alternative service would be 16%.

/ Dr. Pearman's Study is presented in full in Appendix____. His findings on discrimination against Undesirable and General Discharges are corroborated by two other surveys on the subject. See_____.

/ The percentage who would discriminate him if he did no alternative service is 47%.

/ The percentage who would refuse to consider hiring him if he did no alternative service is 18%.

A military applicant to the PCB receives a pardon as well as a Clemency Discharge. If he had any felony Court-Martial conviction, the pardon restores the same rights to him as to a civilian applicant with a Federal draft offense conviction. If he never had a felony Court-Martial conviction (for example, if he received an administrative discharge), the pardon neither restores rights nor immunizes him from further prosecution, since he already enjoys such an immunity by reasons of his discharge. The usefulness of the pardon is limited to its possible impact on military discharge review boards, courts, and other agencies which otherwise would be obligated to take note of his prior Court-Martial conviction and bad military record. Whether a Clemency Discharge plus a Presidential Pardon means more to employers than a Clemency Discharge standing alone is unclear; it is possible, perhaps even likely, that it adds nothing in tangible terms--except where trade license restrictions are involved.

Critics of the President's program contend that a clemency discharge is at best worth nothing, since it is not a discharge under honorable conditions; and confers no veterans benefits. They further contend that it may be harmful, since it

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stigmatizes individuals as having committed AWOL or desertion offenses. /

In his recent survey, ~~of about 100 national and local (Pennsylvania) employers,~~ Dr. William Pearman found that employers view Clemency Discharges as almost the equivalent of General Discharges. / If a job applicant with a Clemency Discharge earned it through alternative service, the percentage of employers who would discriminate against him (40%) is about the same as if he had a General Discharge (39%), and much less than if he had an Undesirable Discharge (75%). / The percentage of employers who would refuse to consider hiring him (6%) is not much larger than if he had a General Discharge (5%), and much less than if he had an Undesirable Discharge (34%).

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability.

/ There is no truth to the further allegation that a clemency discharge disqualifies an individual from ever receiving veterans' benefits; it simply does not alone bestow benefits. Whatever appeal rights one had with an Undesirable or Bad Conduct Discharge, one still has with a Clemency Discharge.)

(continued on next page)

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons given for not discriminating against them are his satisfaction of his national service obligation through alternative service, and the lack of any relationship between his desertion offenses and his potential performance on the job. National employers would discriminate against Clemency Discharges less often than local employers.

This study cannot be considered conclusive evidence of the worth of a Clemency Discharge, but it does indicate that there may be a reservoir of generosity and good will towards those who sought and earned clemency. If this is true, then applicants to the Defense program do receive something of value for performing alternative service. Still, their greatest benefit from applying for clemency is the end they put to their fugitive status and to their chances of going to jail for their AWOL offenses.

However, we realize that most of our applicants were interested in more tangible benefits--especially veterans benefits. While we do not suggest that most of our applicants should have rejected these benefits, some of them were combat veterans. Others had injuries or disabilities resulting from their military service. It is not yet clear whether clemency recipients will be dealt with clemency TCI by agencies which review their subsequent appeals for discharge upgrades or veterans benefits.

Beyond this, we are concerned that many of our applicants will not understand what they have received from the clemency program. Staff conversations with applicants indicate that there are many applicants who do not understand our telegrams and letters describing their grants of clemency.

Without face-to-face counseling, it is possible that many of them will never know what to write on employment application forms about their discharge. Many others may not realize that they can still apply to Discharge Review Boards for a discharge upgrade or to the Veternas Administration for veterans benefits.

Impact on Persons Not Receiving Clemency

It was a consistent principle of the President's Clemency Program that no one be coerced into applying for clemency--or made worse off as a result of having applied. To do otherwise would be neither clement nor fair. For this reason, we are concerned about the impacts of the clemency program on those who did not apply, did not complete alternative service, or were denied clemency. The Clemency Program may have stimulated a greater public tolerance for everyone who committed draft or AWOL offenses during the Vietnam era.

If so, those who did not receive clemency could benefit from the goodwill extended to those who did. We expect that this will be the case.

Of course, the reverse may be true: Individuals who could have applied for clemency but failed to do so (out of choice or ignorance) might face greater public disrespect than ever before. If an individual ~~was~~ were eligible for but did not receive clemency, it is possible that adjudicative or administrative bodies will take adverse notice of that fact when dealing with that individual. For example, a military Discharge Review Board might look with particular skepticism at an upgrade appeal of a person who might have applied for clemency, but did not. The Veterans Administration may do the same for former servicemen appealing for Veteran's benefits despite their bad discharges. Sentencing judges, law enforce-

ment officials, licensing bodies, credit agencies, and others may likewise look askance at an eligible person's failure to receive clemency. With over 100,000 of the estimated 125,000 eligible persons not having applied for clemency, these possibly adverse impacts are of greater significance.

We were the only clemency granting agency who denied clemency to some of our applicants (about 5%--or 800 cases). In making those case dispositions, we did not intend to leave those individuals in a worse position than before they applied. It is possible that those to whom we denied clemency--or who fail to complete alternative service--may be worse off than before they applied. Being denied clemency may be a personal embarrassment and, perhaps a stigma. We did not announce the names of those denied clemency, and we are concerned that the confidentiality of those individuals not be infringed upon by anyone else. We are equally concerned about the confidentiality of those who fail to complete their alternative service.

Conditional, Not Unconditional Clemency

The qualities of mercy and forgiveness inherent in the President's program should not be interpreted as an admission that those who broke the law were correct. By creating the program, the President never intended to imply that the laws were wrong or that the clemency applicants were right. We believe that rights and responsibilities of citizenship are central to the theme of any meaningful clemency or amnesty program and any such program must be evaluated in terms of its reinforcement of those rights and responsibilities.

We realize that there is not now and may never be a national consensus on what a citizen's responsibilities are during time of war--especially if that citizen cannot support the war on religious or ethical grounds. We can only take a position on the subject in the same manner as any citizen (or group of citizens) might. We represent a cross-section of backgrounds, views, and personal interests,

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however, so our own consensus on this point may be of some interest.

We believe that when a citizen breaks a law he considers unjust, it is his responsibility to accept the designated punishment for his offense. Likewise, it is the responsibility of his government either to punish him or to change its laws, to prevent others from believing that they too can break laws without sanction. Once the preventive (or deterrent) impact of punishment is no longer important--in other words, once the unpopular war has ended--it is the government's further responsibility to temper its punishment with compassion and mercy. However, official forgiveness for an individual's failure to serve his country in time of war does not discharge him from his outstanding obligation of national service. Only in circumstances where an individual's punishment could be construed as a fulfillment of his obligations of national service do we believe that anyone can be officially "forgiven" without performing alternative service in the national interest.

Likewise, we consider it fair for the President to have conditioned his grants of clemency upon a good faith application from an eligible person. Executive clemency means more when it is an offer, not just a premptory gift. The President, speaking for the American people, offered reconciliation. That reconciliation must be mutual. If the 100,000 non-applicants were to have knowingly accepted his offer, this President--and, indeed, this country--would owe them nothing more. Our only concern about those who did not apply is that many have failed to realize in time that they were eligible.

However, we believe that the conditions must have been reasonable for the program to have been fair. This means two things: First, applicants must have had a reasonable opportunity to fulfill the condition of application. They must have recognized their opportunity and obligation to apply. As described later, we have some doubts about whether many of our non-applicants did recognize such an opportunity. If this is true, the program's condition of application may have been fair in theory, but unfair in effect.

Second, applicants must have had a reasonable opportunity to fulfill the condition of alternative service. ~~While we recognize that~~ Understandably, the fulfillment of one's obligation of service should involve some personal sacrifices, but it need not entail hardship. The cause of national reconciliation is hardly served if an individual quits his job to do alternative service for three months, cannot regain his job afterwards, and has to go on welfare as a result.

Our applicants were typically assigned to 3 - 6 months of alternative service. We assigned such short periods in recognition that our applicants' obligation of national service had already been partially fulfilled, and we were asking only for an additional gesture of service. According to Selective Service, full-time alternative service jobs of such short duration are hard to find. Also, some of our applicants are reluctant to risk losing their current jobs through such a brief interruption. Over half of our applicants have wives, children, or others dependent upon them for financial support.

completing alternative service, we are concerned that many may complete their alternative service periods without doing any work -- because of their inability (and Selective Service's inability) to find appropriate work. Similarly, we are concerned that many others may be terminated from the program because of their unwillingness to quit steady jobs for other work of such a short duration. By recommending short periods of alternative service, it was not our intent to deny pardons to those individuals. If a sizeable proportion fail to complete alternative service, an important part of our Board's mission will also have failed.

(cont'd pp 15-16)

· A Limited, Not Universal, Program

On balance, we consider the scope of the program to have been quite generous. Rather than require a test of sincere opposition to the Vietnam War (which would have been unfair to people less able to articulate their views), the program was designed to include anyone whose offense may have involved opposition to the war or the military. Sixteen percent of the military applicants to our program and 81% of the applicants to the DOD program went AWOL out of opposition to the war or the military, demonstrating the generosity of the program in defining eligibility. However, some categories of individuals remained ineligible despite the obvious relationship between their offenses and thier opposition to the war. The clearest example of this was the serviceman who refused to obey an order to go to Vietnam. In his case, the military could have discharged him either for missing movement (qualifying him for clemency) or for disobeying orders (not qualifying him for clemency).

A Program of Definite, Not Indefinite, Length

The Clemency program was at first scheduled to accept applications for 4½ months. Because of a surge in our applications, two one month extensions were granted by the President. His apparent purpose of ending the program was to put the issue of clemency behind us as quickly as possible, so that we might also put the War behind us as quickly as possible.

Out of an estimated 123,000 persons eligible for clemency, only 22,500 actually applied to the three separate programs. This 18% application rate seems disappointing at first glance; however, for a program which accepted applications for only six months, that percentage is unusually large. To our knowledge, there has been no other Federal program which has drawn such a rapid response during its first six months. For example, HEW's Supplemental Income Security program, offering cash grants for low-income elderly persons, received applications from only 9% of its eligible target group during its first six months, and it took a full year for the program to match the clemency program's figure of 18%. This was true despite SIS's well-financed promotional campaign. Given the short time span and limited resources of our outreach efforts, we consider our application rate to be rather high.

Unfortunately, we can take little solace from that fact. The SIS program is still accepting applications, but we are not.

We believed, at first, that those eligible for clemency would be well-educated, well-informed, and alert to a communications "pipeline" among themselves which would carry the news about the program. We also believed that veterans counselors would correctly advise former servicement with bad discharges about their eligibility for the program. Both of these assumptions were wrong. A late December survey of twelve persons eligible for clemency showed that not one of them knew he could apply. In early January, the mother of a Vietnam Veteran with a bad

discharge because of AWOL contacted General Lewis Walt of our Board to ask if the local Veterans Administration office had been correct when it told her that her son was not eligible for clemency.

Our Public Information campaign did not begin until mid-January, yet it stimulated a five-fold increase in applications before the month ended -- and over a twenty-fold increase before the second deadline extension expired at the end of March.

The application period was surely sufficient for those who knew from the start what the program offered them. They had ample time to make up their minds about applying. We suspect (but we cannot be sure) that virtually all of those eligible for the Department of Justice had such a sufficient period. However, it is our understanding that the number of applicants to the Department of Defense program was less than it might have been because of widespread misunderstandings about the fairness and decency of the procedures followed by the Clemency Processing Center at Fort Benjamin Harrison. Likewise, it is our firm belief that the small percentage of applications to the Presidential Clemency Board was attributable to the lack of public awareness of our eligibility criteria. The rising monthly tallies of new Board applications (800 through December, 4000 in January, 6000 in February, 10,000 in March) indicates that even more applications would have been received had our program (and Public Information campaign) continued. Informal Telephone Polls conducted by our Staff found that even as late as March, 90% of our applicants had only learned of their eligibility within the past few days. Usually a news article or television announcement had been responsible for their application.

The degree to which the American public still misunderstands the President's program was illustrated by the recent Gallup poll. A substantial ___% of the American public had heard of the clemency program; ___% realized that it included fugitive draft resisters, and ___% knew that it was for fugitive deserters.

However, very few -- ___% and ___%, respectively -- understood that convicted draft offenders and discharged AWOL offenders could apply. Only ___% thought that a Vietnam Veteran discharged for a later AWOL could apply for clemency. It is worth noting that the percentage of the public which understood our eligibility criteria corresponded almost exactly with the percentage of our eligible persons who applied by the March 31, deadline.

It is our firm conviction that many eligible persons did not apply because, even by the end of March they still did not know they could apply. As the Gallup poll indicated, they probably still do not know that the program was for them.*

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* The Gallup Poll discovered that a slight majority of Americans (___% versus ___%) do not favor a reopening of the President's program. However, the widespread misunderstanding about our eligibility criteria requires that a different perspective be taken of these results. In effect, ___% favor giving eligible persons a second chance to apply. We expect that a much greater percentage would favor giving uninformed eligible persons a first chance to make up their minds about applying.

A case-by-case, not blanket approach

Despite the wholly discretionary character of any grants of executive clemency, our program must be judged in terms of the fairness of our rules and the consistency with which we followed them. To be worthy of the respect and confidence of all citizens, we must have observed the basic principles of a fair legal process.

Questions of process arise primarily in any clemency/Amensty program which follows a case-by-case approach.

Any blanket amnesty program would raise relatively few, if any, due process issues. The proper context for any discussion, therefore, is whether the President's program satisfactorily dealt with this extra burden. Absolute --- not comparative -- standards apply. Administrative requirements cannot be used as a justification for any short-cuts of due process.

At the Presidential Clemency Board, we have made every effort to apply fair rules and follow them with consistency. We occasionally had to modify our rules in mid-course, sometimes before corresponding changes could be made in our regulations. However, this was only done when it appeared that the rights and interests of our applicants would not be affected. The procedures which we imposed upon ourselves--quality control of casework, codification of policy precedents, the 30-day period for applicants to comment on their case summaries, and post audit of case dispositions--often--added time and administrative difficulty to our process, but we considered them essential to maintain the quality of our work. The seriousness with which we took our responsibilities was exemplified by our publication of an in-house professional journal, the Clemency Law Reporter. Our Board and staff of over 300 attorneys maintained a continuous dialogue about how our procedures were or were not consistent with due process; when changes were felt necessary, they were made. Ours was not a perfect process--it certainly was too time-consuming to suit us--but it was a reasonable one, carried out in good faith.

We consider our baseline formula, mitigating factors, and aggravating factors to have been fairly developed and fairly applied. Uniformly, they were developed through a clear process of Board consensus about what was relevant about the backgrounds of our applicants. Through the publication of policy precedents in the Clemency Law Reporter, we internally codified our policies. We applied them as consistently as could be expected, given the fact that all but a few hundred of our cases were decided in three-person Board panels.

On balance, the case-by-case approach offered us a means for making the right kind of clemency offer to each of our applicants. Without it, we might have been less generous with Vietnam veterans and ~~other-deserving-applicants----and-more-generous-with~~ persons who committed their offenses because of conscientious opposition to war. Likewise, we might have been more generous with those whose offenses resulted from irresponsibility, ~~xxxxxxxxxxxxxxxxxxxxx~~ selfishness, or cowardice. This would have had the effect of demeaning the President's Constitutional pardoning powers.

Blanket amnesty would have treated all cases alike. ~~xxxxxxxxxxx~~ ~~xxxxxxxx~~ This would have been fundamentally unfair -- to our applicants and to the American people. Consider the following two cases:

(Case #09067) Applicant did not go AWOL until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the U. S. was wrong in getting involved in the war and that he "was wrong in killing people in Vietnam." He had over three years' creditable service, with 14 excellent conduct and efficiency ratings. He re-enlisted to serve his second tour within three months of ending his first. He served as an infantry man in Vietnam, was wounded, and received the Bronze Star for valor.

(Case #00206) ~~(Sweden-drug-peddler-case)~~
Applicant met his wife, a Danish citizen, shortly after arriving in Germany on a military assignment. She became pregnant, and he went AWOL to marry her. After turning himself in, he was returned to Germany and placed in pretrial confinement. However, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests for theft and narcotics charges, received a sentence of 10 months imprisonment, and was deported to the United States.

would have cheapened the pardon granted to the first. His friends and employers would have been more reluctant to acknowledge that he had earned his pardon.

Likewise, the ~~public~~ American people might have assumed that, since all applicants would have been treated alike, all applicants would have been alike. Many of the hard feelings generated during the Vietnam War resulted from such blanket judgments. By fostering such an attitude, blanket amnesty might have perpetuated -- and not healed -- the wounds of an era.

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APPENDIX F

F. PCB POLICY PRECEDENTS (CLR #5)

CLEMENCY LAW REPORTER

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

VOL.1 NUMBER FIVE 23 JULY 1975

This Edition of the Clemency Law Reporter contains updated texts for the Aggravating and Mitigating Factors. Major changes are the clarification of Mitigating #8 and #9, the inclusion of drugs under Mitigating #3, and two changes in Mitigating #2. The attached texts supersede those published in the Policy Precedents Section of previous issues of the CLR.

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Amendments to the Code of Federal Regulations, Title 2, Chapter I, Part 102 reflecting the new Aggravating/Mitigating texts are reproduced for your information.

The Clemency Law Reporter is an unofficial document, the contents of which neither constitute nor imply the official position of the Board, but are intended as an informal guide for the exclusive use of the PCB Staff.

The Clemency Law Reporter is prepared by the PCB Planning, Management and Evaluation Staff. For information, please contact Wil Ebel or Bob Terzian. Room 901. Tel. 634-4823.

AMENDMENT TO CODE OF FEDERAL REGULATIONS

Title 2 - CLEMENCY

Chapter I - Presidential Clemency Board

Part 102 - Substantive Standards

Administrative Procedures and Substantive Standards

The Presidential Clemency Board published its administrative procedures and substantive standards on March 21, 1975 (40 FR 12763), and amended Sections 101.2, 101.8(b), 101.8(d), and 101.9(a) on June 13, 1975 (40 FR 25199). It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

As previously indicated, the Board does not consider itself bound by the Administrative Procedure Act. However, in its attempt to adhere to principles of substantive and procedural due process, the Board has published its regulations and will publish changes in those regulations as new circumstances are presented to it. The following is an explanation of such changes which seem to the Board to be the most significant since the last time its regulations were amended. Therefore, Sec. 102.3 (Aggravating circumstances) and Sec. 102.4 (Mitigating circumstances) are amended to incorporate the addition of three new Aggravating Factors (Secs. 102.3(b)(10), (11), and (12)), and one new Mitigating Factor (Sec. 102.4(b)(16)); as well as additions modifying two Mitigating Factors (Secs. 102.4(b)(5) and (9)).

Section 102.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed below may either disqualify an individual for executive clemency or cause the Board to recommend to the President a period of alternative service exceeding the applicant's "baseline period of alternative service," as determined under Sec. 102.5.

(b) Aggravating circumstances of which the Board takes notice are:

(1) Other adult criminal convictions;

(2) False statement by applicant to the Presidential Clemency Board;

(3) Use of force by applicant collaterally to AWOL, desertion, or missing movement or civilian draft evasion offense;

(4) Desertion during combat;

(5) Evidence that applicant committed offense for obviously manipulative and selfish reasons;

(6) Prior refusal to fulfill court ordered alternative service;

(7) Violation of probation or parole;

(8) Multiple AWOL/UA offenses;

(9) AWOL/UA of extended length;

(10) Failure to report for overseas assignment;

(11) Other offenses contributing to undesirable discharge (this factor only applies to dischargee for unfitness); and

(12) Apprehension by authorities.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case,

and is material to the disposition of that case, the Board postpones final decision of the case and immediately informs the applicant and his representative of their opportunity to submit evidence material to the additional circumstance.

Section 102.4 Mitigating circumstances.

(a) Presence of any of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance is considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's alternative service below the baseline period, as determined under Sec. 102.5.

(b) Mitigating circumstances of which the Board takes notice are:

(1) Lack of sufficient education or ability to understand obligations or remedies available under the law;

(2) Personal and family problems either at the time of offense or if applicant were to perform alternative service;

(3) Mental or physical condition;

(4) Employment and other activities of service to the public;

(5) Service-connected disability;

(6) Period of creditable military service;

(7) Tours of service in the war zone;

(8) Substantial evidence of personal or procedural unfairness;

(9) Denial of conscientious objector status on procedural, technical, or improper grounds, or on grounds which have subsequently

been held unlawful by the judiciary;

(10) Evidence that an applicant acted for conscientious, not manipulative or selfish reasons;

(11) Voluntary submission to authorities by applicant;

(12) Behavior which reflects mental stress caused by combat;

(13) Volunteering for combat, or extension of service while in combat;

(14) Above average military conduct and proficiency;

(15) Personal decorations for valor; and

(16) Wounds in combat.

(c) An applicant may bring to the Board's attention any other factor which he believes should be considered.

These amendments will become effective immediately.

Issued in Washington, D.C. on July 23, 1975.

Charles E. Goodell,
Chairman, Presidential Clemency Board,
The White House.

Aggravating Factor: 1

Other Adult Convictions: This factor indicates any civilian felony conviction or conviction by a Special or General Court-Martial of any offense, either prior or subsequent to the qualifying offense. A felony conviction is any civilian conviction for any offense for which the sentence is or could have been imprisonment for one year or more. In determining whether a civilian felony conviction has occurred, some reference to the state law may be necessary. Non-judicial punishments, arrests, acquittals, misdemeanors, youthful offender convictions resulting in set-asides, juvenile convictions, or pre-trial confinements are not "felony convictions." A juvenile conviction results when the defendant is 18 years or younger, unless State law provides otherwise.

1. Other Adult Convictions

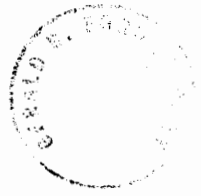
(No. 1825) Applicant plead guilty to a Federal Charge that he violated the Dyer Act, in that he transported a stolen motor vehicle across a state line.

(No. 1286) The applicant was arrested for possession of barbiturates, after which he jumped bond and assumed his wife's maiden name. He was extradited and subsequently convicted for failure to keep his local board notified of his current address, and was placed on 2 years probation. He was also convicted of the old state charge and served a 6 month sentence.

(No. 1371) Applicant was tried by Special Court-Martial. Following this he escaped but voluntarily returned. His current sentence was meted out at the subsequent Special Court-Martial trial.

(No. 2722) Applicant was discharged in lieu of court-martial. He is presently incarcerated in a minimum security installation in Tennessee for grand larcency.

(No. 2368) After receiving his U.D. applicant was convicted by civilian authorities of arson in the first degree and was sentenced to six months to three years in the State Penitentiary.



Aggravating Factor: 2

False Statement by Applicant to the Presidential Clemency Board - This factor indicates any willful misrepresentation of a material fact by an applicant in his application form, letters, or other communications to the Board. A material fact is one which could affect a Board determination of baseline, aggravating factors, or mitigating factors. Mere conflicts are not cited unless there is evidence of an intent to mislead.

False Statement by Applicant to PCB A2a

(No. 388) In his letter the applicant reports serving in Vietnam and also reports that he was confined one and a half years in the stockade without trial. There is nothing in his military file to reflect these facts except a DD 214 entry which was found to be erroneous.

(No. 368) The applicant wrote the PCB and indicated that he had a clean record with no prior courts-martial; however, his military personnel file indicates one prior court-martial and one Article 15 for AWOL offenses.

(No. 3604) Applicant listed as his name on the PCB application the alias he used while in the military. (The action attorney discovered the use of a false name when he contacted the State prison where applicant is presently incarcerated.)

Aggravating Factor: 3

Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense- This factor indicates the use of physical force by an applicant to aid in the commencement or continuation of his offense. The use of force not directly related to a qualifying AWOL or draft offense is not relevant.

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Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense

(No. 3752) Applicant escaped from confinement, damaging military property in the process.

(No. 3073) On two occasions applicant escaped from confinement by attacking a guard with a razor or knife.

(No. 3389) Applicant effected his AWOL by breaking away from an arresting officer.

Aggravating Factor: 4

Desertion During Combat or Leaving Combat Zone: This factor indicates that an applicant went AWOL from his unit either during actual enemy attack or before any reasonably anticipated enemy attack. Going AWOL directly from Vietnam gives automatic rise to this factor. However, departing AWOL from R&R outside of Vietnam or home leave from Vietnam does not constitute this factor though it does constitute aggravating factor #10. An applicant's reasons for his qualifying offense do not affect the applicability of this factor.

Desertion During Combat or Leaving Combat Zone: 4

(No. 8410) Applicant was an infantryman in Vietnam when he went AWOL. He was picked up in a rear area by MP's and ordered back to the field by two lieutenants. He refused to fly out to join his company.

(No. 7163) Applicant commenced the first of three AWOLs while in Vietnam. He flew back to California His subsequent AWOLs occurred after his apprehension in the U.S.

(No. 6307) Applicant stated at his trial that he became extremely frightened in combat. He went AWOL after he was sent to a rear area for chills and fever.

(No. 5554) Applicant bought orders to return to the U.S. from Vietnam.

(No. 2411) Applicant received an undesirable discharge for unfitness; two of four AWOL offenses occurred while applicant was in Vietnam.

Aggravating Factor: 5

Evidence the Applicant Committed Offense for Obviously Manipulative and Selfish Reasons- This factor applies in a wide range of factual situations. It indicates that an applicant committed his qualifying offense for reasons other than conscientious opposition to the war, family hardship, or some other reasonable justification. Typically, an applicant to whom this factor applies committed his offense because of personal convenience or whim. This factor can also be present if an applicant goes AWOL to solve a family problem, then fails to return for an unreasonable period of time after the problem is solved. For the factor to apply in full force, there must be reliable evidence demonstrating selfish purposes for the offense.

The Board will first determine whether evidence of selfish and manipulative reasons is present (i.e., whether aggravating #5 has its regular application). If no such evidence is found, a "weak" aggravating #5 will be applied in circumstances where a reasonable inference may be drawn that the offense had been committed for selfish and manipulative reasons. Such an inference may be drawn if there are no apparent reasons in the record for the qualifying offense. However, this "weak" application of aggravating #5 will not arise if any of the mitigating factors #1, #2, #3, #8, #10, or #12 are present, except in unusual circumstances where these mitigating factors bear no relationship to the qualifying offense.

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5. Evidence that Applicant Committed Offense for Obviously Manipulative Selfish Reasons.

(No. 29.) Applicant's parents reared their children in the Moorish faith. The Muslim faith was the basis of the applicant's refusal to be inducted. Following high school, applicant became associated with a group of other Muslims, who because of their delinquent ways, were known as Outlaw Muslims. While a part of this group, he participated in a bank robbery.

(No. 1200) Upon return from overseas, applicant requested leave to marry his girlfriend, who was pregnant. Since leave was refused, he felt his only recourse was to leave without permission.

(No. 241) A few days before applicant was due to report to an Army Overseas Replacement Station, his wife threatened to commit suicide unless he promised not to report, as she was positive he was going to Vietnam and would be killed. Applicant subsequently divorced his first wife but did not then return to military control because he had debts he wanted to pay before returning.

(No. 612) Applicant stated that he went AWOL for approximately three months knowing that after that period of time he could come back and request a discharge.

(No. 417) Applicant testified at his court-martial that, before being inducted, he had requested a delay due to his mother's poor mental health and financial condition. He was subsequently inducted. While in basic training applicant applied for a hardship discharge; however, it was turned down because of insufficient documentation. Shortly thereafter, applicant's mother was hospitalized because of a car accident, and he went home on emergency leave. At the end of his leave, applicant did not return to his base because his mother was bedridden and there was no one to take care of her and provide for his younger brothers and sisters. He remained at home for a year and a half and worked under an alias. He stated that he held his obligation to his family higher than his obligation to his country. Applicant has numerous AWOLs in his record.

After returning from his AWOL, he was ordered to another base to complete his disrupted military training. He went AWOL again, never appearing at his new station.

(No. 344) Applicant went UA the first time "just for something to do" he left the second time because he "got involved with a woman." The third and fourth times he went UA were to go home and support his family as he was in a no-pay status with the Marine Corps.

(No. 206) Circumstances of offense. According to testimony the applicant met his wife, a Danish citizen, shortly after arriving in Germany. She became pregnant and he attempted to obtain permission to marry her. When he was unsuccessful he went AWOL on 14 Oct 66. After turning himself in, he was returned to Germany and placed in pretrial confinement. Shortly thereafter, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests on thefts and narcotic charges, received a sentence of 10 months imprisonment, and was deported back to the U.S.

(No. 243) Applicant began his first AWOL shortly after his being drafted. He had a history of repeated AWOLs. There is little to explain the repeated AWOLs but that he did not want to be in the Army.

(No. 122) On or about 16 Nov 70 he went UA and did not return to Marine Corps control until 29 Nov 73, when he was apprehended by the FBI. He asserted at the trial that he orginally went UA because a man from a rental car agency with whom he had dealt told him to pay the money he owned or he (the rental agent) would "make sure I go to the brig." He used an alias in all activities.

(No. 161) On 18 Sept 69 he went AWOL for over four and one-half years. He stated that he did not have any concrete reason for going AWOL.

(No. 173) Applicant escaped from the stockade by fleeing a police detail. At the time of his escape he was serving a sentence adjudged by a special court for previous AWOL.

(No. 98) On 13 Jan 71, applicant was ordered to report for military induction. On 26 May 71 he requested postponement claiming hardship dependency. After several requests for postponement having been denied, applicant filed to complete processing for induction. He surrendered to the FBI on 29 Jan 73. He insisted throughout his trial that he did not wilfully evade

induction, that he simply failed to conform with Selective Service procedures. He cited numerous family problems as distractions: his father's illness, his mother's unemployment, his sister's drug addiction, and the fact that his immediate family is economically deprived.

(No. 1036) Applicant admits that he never gave much thought to his feelings about war until he received his induction notice. He was given the opportunity to serve as a non-combatant, but admits that he procrastinated until he was no longer eligible.

(No. 1285) In response to Selective Service inquiries, the applicant's parents notified the Board that their son was in Canada, and they did not know where. From about July 1969 until May 1973 the applicant apparently lived and worked in Canada.

(No. 1560) Applicant's explanation for AWOL is that he thought he was being unjustly selected for an overseas assignment. The file does not contain information either supporting or denying this feeling.

(No. 1902) Applicant stated that he went AWOL because he does not like the Army.

Aggravating Factor: 6

Prior Refusal to Fulfill Alternative Service: This factor applies to applicants who failed to perform Draft-Board ordered alternative service which was imposed after applicant had been granted Conscientious Objector Status, or court-ordered alternative service imposed as a condition of probation or parole. This factor applies automatically to members of Jehovah's Wiéness, Muslim, Quaker, or other religious sects (who cannot abide by Selective Service orders to perform alternative service) only when they refuse to complete alternative service subsequent to a judicial order. Any member of such a religious sect must have had a bona fide religious reason for his offense. This factor does not apply in case of any stated or implied unwillingness to perform alternative service assigned by the Presidential Clemency Board.

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(No. 92) Applicant received 2 years probation for a Selective Service violation with the condition that he work 4 hours per week at Public Works. He failed to comply.

(No. 55) Applicant was classified 1-O in 1966 and was ordered to report to his local board for instructions on how to proceed to an alternative service job. He failed to appear at the local board and was convicted in 1973 on a guilty plea to failure to report for alternative service.

(No. 779) Applicant was classified I-O because of his religious beliefs as a Jehovah's Witness. When offered alternative civil employment, he engaged in dilatory tactics and made token appearances on the job.

(No. 560) Applicant was classified 1-A and ordered to report for induction. He reported but failed to submit and was sentenced to 3 years in the custody of the Attorney General, execution suspended, with 5 years probation, 2 years of which were to be in work of national importance. After working for one year at a Pennsylvania hospital, the applicant resigned his job and notified the sentencing judge that he, in good conscience, could no longer cooperate and requested revocation of his probation. The judge, therefore, revoked probation and gave the applicant a one year jail sentence. He was released after serving 10 months in prison.

(No.1027) The applicant's probation officer indicates that his performance of alternative service was "rather poor".

Aggravating Factor: 7

Violation of Probation or Parole: If an applicant violated the probation or parole to which he was sentenced by a Civilian court, or failed to fulfill the conditions attached to a suspended sentence of a military court-martial, this factor may apply. The violation must have been serious enough to have caused the revocation of that probation or parole, or the vacation of the suspended court-martial sentence.

7. Violation of Probation or Parole

(No. 10) Applicant pled guilty to a Selective Service violation, and was placed on three years probation on 30 December 1970. This probation was subsequently revoked for, among other items, failure to comply with the specific terms of his probation "to make a bonda fide effort to enlist, and if that failed, to perform alternate service under supervision for three years."

(No. 1600) Shortly after being placed on probation, applicant was returned to Court due to his failure to perform the ordered work. Probation was reinstated and extended three years from that date. Applicant has complied with the conditions of probation. He was discharged from probation prior to the expiration of the maximum period and his conviction was set aside pursuant to the Youth Correction Act.

(No. 1023) Applicant was convicted of failure to report for induction and sentenced to 5 years probation. Following conviction and while on probation, applicant was arrested and pled guilty to state felony charges. Applicant's federal probation was revoked following his state conviction.

(No. 1671) In early 1974 applicant moved to Arizona without the knowledge of the Michigan probation authorities.

(No. 139) Applicant received a BCD and 6 months confinement for an AWOL offense, but the sentence was suspended for 6 months. When applicant realized his sentence would return him to action duty, he went AWOL again and the suspension was vacated.

Aggravating Factor: 8

Multiple AWOL/UA Offenses: This factor indicates that an applicant went AWOL more than once. Along with all punished AWOL offenses, it also includes all AWOLs not resulting in NJP or court-martial punishment occurring subsequent to the date of the last AWOL which was punished by NJP or court-martial. It does not include unpunished AWOL offenses occurring prior to the last punished AWOL offense. If there is a prior AWOL general or special court-martial conviction, both #1 and #8 are to be marked in aggravation.

Multiple AWOL/UA Offenses: 8

(No. 3444) Applicant received a SCM for two periods of AWOL (1 day each)and one charge of missing movement. He then received a NJP for one AWOL (1 day) another NJP for three AWOLs (1; 1; 10 days), and one NJP for two AWOLs (7; 1 days). He then received a SPCM for two AWOLs (2 months 17 days; 3 months 19 days) He accepted an undesirable discharge in lieu of court martial for one period of desertion (2 yrs. 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 mo. 2 days; 2 months 13 days; 6 months 29 days) and one period of non-qualifying AWOL (3 months 28 days). This is a total of 1 period of desertion, 15 periods of qualifying AWOL and one non-qualifying AWOL (total of 5 yrs.)

(No. 1022) Applicant was charged with four periods of AWOL for which he accepted a discharge in lieu of court-martial.

(No. 8255) Applicant was discharged for frequent involvement; one AWOL of 19 days was punished by an SCM. The only other AWOL of 22 days precipitated his discharge.

(No. 6710) This applicant was discharged in lieu of court-martial. There are two qualifying AWOLs--one of 1 month, 7 days, the other of 1 month, 18 days.

(No. 1664) Applicant received an NJP for a 5 day AWOL. He accepted a discharge in lieu of court-martial for two AWOL's of one day, breaking restriction, and disobedience.

(No. 3167) Applicant accepted a discharge in lieu of court-martial for one AWOL. However, he received an NJP, and two SPCM's for previous AWOLs.

(No. 5558) Applicant received a BCD for one 2 month AWOL. He had one NJP for previous AWOL.

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Aggravating Factor: 9

AWOL/UA of Extended Length: This factor indicates the combined length of qualifying AWOL offenses. If the last AWOL offense resulted in an NJP or a court-martial conviction, only those AWOL offenses specified in the NJP or court-martial charges are counted in assessing the length of AWOL. If the last AWOL offense did not result in either an NJP or court-martial conviction (even if it directly led to applicant's discharge), then all unpunished AWOL offenses subsequent to the last punished AWOL offense are to be included in the assessment of the length of the AWOL. This factor does not apply if the applicant had been AWOL for a total of two months or less. It is "weak" if the AWOLs total two to six months, and it applies in full force if the AWOLs total over six months.

AWOL/UA of Extended Length: 9

(No. 5554) Applicant had an AWOL of 4 years, 11 months, and 9 days. He received a BCD.

(No. 1022) Applicant had 4 AWOLs of 1 month 28 days; 17 days; 15 days, and 1 month, 18 days, respectively. He took a U.D. in lieu of court martial. (weak)

(No. 4045) Applicant was discharged for unfitness. He had three AWOLs of a total of 5 months, 1 day. (weak)

(No. 8160) Applicant received a UD in lieu of court-martial for an AWOL of 1 year, 2 months, 11 days.

(No. 8167) Applicant had an AWOL of 1 year, 3 months, 12 days for which he received a BCD.

Aggravating Factor: 10

Failure to Report for Overseas Assignment: This factor applies where the applicant has been ordered to report for military duty outside the United States (Vietnam or elsewhere) and goes AWOL before reporting to the overseas assignment. Alaska and Hawaii are not included in this factor. In addition, this factor applies with full force only to a failure to report to Vietnam or any overseas staging area for Vietnam (e.g. Okinawa). For all other overseas assignments (e.g. Germany or Korea), a "weak" aggravating 10 applies.

(No. 1807) One day before applicant was scheduled to be sent overseas, his destination not being clear on the record, he went AWOL.

(No. 3328) Applicant went AWOL when he failed to report to Overseas Replacement Station for assignment to Vietnam.

(No. 3584) During advanced training, applicant decided that he did not want to kill anyone, and he applied for a C.O. status-which was refused. Later, orders came to report to Vietnam. While on leave, before this assignment was to begin, the applicant requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was 8 months pregnant and that he was an alien. His request was denied and, consequently, applicant went AWOL.

(No. 507) After entering the Army, applicant requested removal from the Officer Candidate School list, stating that he was opposed to killing and did not believe in the Vietnam war. Shortly thereafter, he formally applied for a conscientious objector separation from the service. He thereafter failed to report to a west coast personnel center for movement to Vietnam.

(No. 8453) Applicant went AWOL before he was scheduled to report for assignment to Germany. (Weak)

(No. 7377) Applicant was wounded in Vietnam and sent to a hospital in Japan and then to a hospital in U.S. There he learned about marital and financial problems; he was also told that he would be sent back to Vietnam after his release from the hospital. He went AWOL from the hospital.

(No. 6665) Applicant was stationed in Germany when he received a Red Cross message about his grandfather. Emergency leave was denied but regular leave was approved. Applicant did not return from leave. (weak)

(No. 1364) Applicant was stationed in Thailand when he went home on emergency leave because of his father's illness. After failing to obtain a hardship discharge or a compassionate reassignment applicant went AWOL rather than report back.

(No. 4366) Applicant was assigned to Vietnam when he returned to U.S. on emergency leave because of his fathers impending death. After his father's death he applied for hardship discharge; when it was denied he went AWOL.

(No. 5600) Applicant had just returned from Vietnam when he received orders to report to Korea. He went AWOL because his family could not accompany him. (weak)

Aggravating Factor: 11

Other Offenses Contributing to Discharge: This factor applies only to punished offenses in UD-Unfitness cases. Summary court-martial convictions and NJPs for non-qualifying offenses are included in its scope. This factor does not apply in UD-Chapter 10 (discharge in lieu of court-martial) or punitive discharge cases (e.g. cases in which applicant was discharged by reason of court martial conviction for the qualifying offense).

Other Offense Contributing to Discharge: 11

(No. 8334) Applicant received an undesirable discharge for unfitness, with multiple reasons. In addition to an NJP for leaving his duty post and an SPCM for AWOL, he received an NJP for wrongful possession of 4 liberty cards and an SPCM for false claims against the government.

(No. 4995) Applicant has an NJP for AWOL and two NJP's for AWOL and failure to obey a lawful order. He also received NJP's for disrespect and for assault. He had an SCM for larceny. He received an undesirable discharge for unfitness.

(No. 13926) Applicant received an undesirable discharge for unfitness. He had one NJP for AWOL, one SPCM for 3 AWOLs, and one SCM for AWOL, and stealing. He also had three NJP's for failure to obey an order, one NJP for disrespect, one SCM for disrespect, and an SPCM for disrespect and assault.

Aggravating Factor: 12

Apprehension by Authorities: This factor applies whenever the applicant is apprehended for the last of his qualifying offenses. There must be some evidence of apprehension. If the applicant did not willfully evade authorities prior to his apprehension (e.g. if he lived openly in his home town under his own name), a "weak" aggravating #12 applies. In the absence of sufficient information, neither aggravating #12 nor mitigating #11 (surrender) applies.

Apprehension by Authorities 12

(No. 11067) Applicant was arrested in Chicago for a violation of the Federal Firearms Act while AWOL.

(No. 9434) Applicant was arrested by civilian authorities while he was visiting his parents to discuss his AWOL. He said he was planning to turn himself in. (weak)

(No. 8334) Applicant was apprehended in September 1964. He stated he intended to voluntarily return to military control in December 1964.

(No. 5027) While AWOL applicant was injured in an automobile accident. Civilian hospital authorities turned him over to Navy hospital authorities.

(No. 7172) Applicant's AWOL was terminated by apprehension by the F.B.I.

(No. 3171) Applicant had four AWOL's; for the first three, he voluntarily surrendered; for the last, he was apprehended.

(No. 2891) Applicant was arrested in June 1971 after a grand jury had indicted him in February 1971 for failure to report for his physical.

(No. 2848) Applicant was arrested on June 19, 1968, and transported to the induction center. He refused to be inducted and left the center. He was rearrested December 21, 1968.

(No. 1542) Applicant was aware that he was being sought by authorities after his indictment in July 1973 but did not attempt to evade apprehension. He was arrested in January 1974.

(No. 1039) Applicant refused to report for induction. He was located and arrested by F.B.I. agents.

Mitigating Factors: 1

Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available Under the Law. This factor arises from scores reported by IQ tests and military tests that approximate IQ tests. As a general rule, an IQ score of 80 or below is sufficient for this factor to apply. (Note: the Navy GCT score is roughly half the equivalent IQ score. The Marine Corps GCT and Army GT provide a rough IQ equivalent.) An AFQT score of less than 30 (Categories IV and V) makes this factor apply unless other IQ scores are in the average range or above. However, an AFQT in the 30's (Category III), accompanied by a low GT or IQ score, also makes it apply. This factor can apply even if there is a conflict between high and low scores.

Data other than test scores are sometimes used to establish this factor: for example, a grade-school-level reading ability, or a psychiatrist's statement that an applicant is retarded. The Board has also marked this factor despite high educational achievement or satisfactory military proficiency scores, where there is evidence of a deficiency in ability to understand his obligations. This is particularly true where there appears to be language or cultural difficulties in relating to other individuals.

Mitigating Factors

1. Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available Under the Law.

(No. 216) (A strong No. 1) He completed the 10th grade and quit school because he lost interest. His GT score measures 68 and his AFQT score is 12 (Category IV).

(No. 83) (A strong No. 1) Applicant has a sixth grade education and a Beta IQ of 49.

(No. 583) The applicant completed the 10th grade in public school, but at training school he was returned to the eight grade. His IQ was tested on the Wechsler Intelligence Test for Children at 62. During the present classification his Beta IQ was reported at 84.

(No. 439) This applicant is a high school graduate with three years of college. His GT score is 95, however, his AFQT score is 7, Category V.

(No. 397) He withdrew from school during the 11th grade. His AFQT score is 18 (Category IV), considered low, and his GT score is 93, considered average.

(No. 79) Applicant dropped out of high school at either the ninth or the eleventh grade (record unclear) to help mother with finances. School record indicates recurrent history of class failure and non-attendance. Revised Beta score was 76 and GATB was not administered due to poor reading level. However, it is noted that applicant has a tested "border-line intelligence."

(No. 70) The applicant's mother is approximately 58 years old and reportedly is somewhat primitive, illiterate and slightly retarded. The applicant completed the third grade by 14 and had a Beta score of 69.

(No. 45) The applicant lived in British Honduras until he immigrated to New York City with his mother in 1969. During the two years following he worked in a dental laboratory training program and attended a night high school. In 1970 the applicant attended university on a New York City social services grant. There is no information on academic achievements or IQ tests.

(No. 2091) Though the record is scant as to personal background on the applicant, it is known that he completed 9 years of education and spent 3 years in an institution as an emotionally disturbed child. His GT is 108; his AFQT 78 (Group II).

(No. 1944) Applicant quit school at age 16 after completing the eight grade. Applicant's GT score is 85, and his AFQT score is 32 (Category III).

Mitigating Factors : 2

Personal and Family Problems Either at the Time of Offense or if Applicant Were to Perform Alternative Service. This factor reflects significant emotional, psychological, financial, marital, or other personal difficulties faced by the applicant or his immediate family prior to, at the time of, or after his qualifying offense. His immediate family includes spouse , intended spouse (only if pregnant), children, parents, guardians, grandparents, and aunts and uncles. This factor applies only if these problems contributed to the offense or its continuation, or if these problems would substantially impair an applicant's ability to perform alternative service.

The Board will first determine whether evidence of personal and family problems is present (i.e., whether Mitigating #2 has its regular application). If no such evidence is found, a "weak" mitigating #2 will be applied in circumstances where a reasonable inference may be drawn that the offense had been committed for personal and family problems. Such an inference may be drawn from general circumstances or statements even if there are no specific reasons in the record for the qualifying offense.

2. Personal and Immediate Family Problems Either at the Time of Offense or if Applicant were to Perform Alternative Service.

(No. 710) His father had a bad criminal record and was awaiting trial for murder.

(No. 474) Applicant states that while at his army base he received a letter from his mother stating that his father's eyesight was failing and the family was having financial problems as a result of his father's inability to work. He applied for a hardship discharge, but it was denied. He was transferred back to his home base, where he learned by mail that his father's eye condition had worsened. Subsequently, he left the military control and went home where he worked continuously for a construction company.

(No. 236) (weak No. 2) His mother's health began to fail when the applicant was 16 years of age, and consequently the family was receiving welfare assistance. He reportedly went AWOL in order to help his mother pay bills and to get off welfare.

(No. 506) While he was waiting at an army base, his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems, and he requested Red Cross help and emergency leave to deal with the difficulty. His family was put out of its apartment, was forced to live in its automobile, and had no food.

(No. 7856) Applicant supported his mother, who lived alone. While he was in the service, his wife deserted him, and he went AWOL to find her. Later he found that she had become pregnant by another man.

(No. 7611) Applicant went AWOL for four short periods because his wife was determined to be pregnant by civilian doctors and not pregnant according to military authorities. It was finally determined that she had large cysts on her ovaries.

(No. 2316) Applicant's father died in 1962. Over the past years, his mother's poor health impaired her ability to raise her family and caused her to become an alcoholic.

(No. 3573) Applicant and his siblings are the offspring of a broken home. The parents went through considerable marital difficulties prior to a divorce. Family history indicates that the father committed himself to a psychiatric hospital for 2 weeks and then continued to be an outpatient. The parents were divorced in 1970 and in the same year the mother remarried.

(No. 189) This applicant, who is an American Indian, was raised by his aunt and uncle in a small community in the South. During his AWOL he worked for his tribe earning $2.00 an hour to support his aunt and uncle, the latter being crippled.

(No. 385) Applicant's natural parents died in an automobile accident and he was adopted at the age of 5. His adoptive parents died when the applicant was 14 years old. The applicant is unmarried and has an older sister but he does not know where she lives. He dropped out of school after completing the tenth grade but was encouraged by his principal to join the Army. Consequently, applicant enlisted at the age of 17.

(No. 121) Applicant's first AWOL began because his father was seriously ill and had his leg amputated. Applicant's brother was in prison. Applicant felt he was needed at home. The most recent AWOL was committed because applicant's father was critically ill. Applicant's wife and family were having serious financial and medical problems. His wife has suffered from a disease of the blood cells, and according to applicant, "almost died two times."

(No. 332) Applicant was granted emergency leave in the ten months of service in Vietnam upon verification by the Red Cross that his mother had lapsed into psychiatric depression and had threatened suicide. Her psychiatric crisis was precipitated by the physical trauma and sequelae she sustained from an automobile accident in May 1969. The accident left her with an abnormal thyroid condition, causing enlargement of the gland and cardiac impairment rendering her unable to work.

(No. 3538) Applicant fathered a son born to a Vietnamese woman. He later sought permission to marry her, which was denied. Two days later he received orders to leave Vietnam when he thought he had 4 months left on his tour. After returning to the U.S., he applied to return to Vietnam but was not sent there. He attempted to have his Vietnamese girlfriend and his son brought to the U.S., but was told this was impossible because he was not married to the woman. He stated that he went AWOL in despair.

Mitigating Factor: 3.

Mental or Physical Condition. This factor reflects mental problems or physical diseases and disabilities. The condition must be serious enough to have caused some personal hardship or incapacity. Also, it must have contributed to an applicant's offense or may affect his ability to perform alternative service. Alcholism and drug addiction are covered by this factor. The physical and mental problems may be related to the quality of medical treatment received by the applicant during his military service, but that relationship is not necessary to the finding of this factor. If the physical condition existed before or at the time of enlistment or induction and continued throughout the applicant's military career, both Mitigating Factors #3 and #8 apply. Intelligence defects are not included in this factor.

Mental or Physical Condition

(No. 194) While applicant had been on leave, he was hospitalized for treatment of Infectious Hepatitis. Applicant states that after the diagnosis of infectious hepatitis had been made by a civilian doctor, the doctor had told him that "his resistance was low and that he would live to be 30 years old." Applicant's shock and fear at this statement, coupled with the realization that, if true, he had only a relatively short time to live, precipitated his absence. Defense exhibits admitted at trial confirm applicant's contraction of viral hepatitis and the fact that he was treated at a veterans' hospital after his visit to the civilian doctor.

(No. 309) During boot camp applicant, a Mexican-American, had been subjected to verbal and physical abuse and therefore absented himself. Applicant wept hysterically at the trial when he recalled his experience. Finding training intolerable, applicant sought advice from his mother, who advised him to absent himself. At his trial, applicant introduced an affidavit by a Navy psychologist which states that the applicant is passive, dependent, schizoid. A civilian psychiatrist found the applicant to have "passive, dependent personalities severe." Applicant also introduced testimony of three sucidal attempts.

(No. 510) Applicant explains that he was sent to Korea shortly after enlisting and while there he contracted pheumonia and had a cold his entire duty. Applicant was medically evacuated from Korea to the United States for lung surgery, when a part of one of his lungs was removed.

(No. 342) (weak No. 3) Evidence in the record of trial indicated the applicant was upset and nervous and unhappy with his orders to Vietnam. A letter from a psychiatrist was introduced on behalf of the applicant, and it stated that he was suffering from extreme anxiety brought on by his infantry training and his orders to Vietnam. The letter explains that the applicant had an extreme fear of physical mutilation brought on by his having been in two car accidents and the fact that some of his friends were killed in Vietnam.

(No. 446) Applicant sustained a serious back injury in an auto accident in the midwest. He was treated at both a civilian and a VA hospital. He returned to his base where he attempted to obtain further medical treatment for his back. Applicant became frustrated at the lack of treatment for his injured back and went AWOL. He received medical treatment at home.

(No. 184) Applicant had a history of severe migraine headaches at times of tension and stress. He requested medical evaluation for his headaches during basic training and advanced infantry training. He did not receive medical attention. He then went AWOL.

(No. 208) While AWOL, applicant was involved in an automobile accident, severely injuring his arm. It was then discovered that he was suffering from a thyroid condition which caused him to lose 70 pounds. A psychiatrist concluded that he had the typical thyroid symptoms of depression, irritability, impulsivity, feelings of persecution and low tolerance for stress; these problems were probably precipitated by his induction, illness and confinements, marriage and accident; this was most noticeably shown by his weight loss; and that, although he could distinguish right from wrong, his illness seriously impaired his ability to adhere to the right or to form a specific intent.

(No. 227) Applicant suffers from a physical disability, an apparent birth defect, defined as pseudarthosis of the lumbar spine with fusion at joints L5 S1. The defect causes applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the Induction Station. This disclosure was ignored. Such a condition is normally an acceptable basis for rejection at induction. However, applicant was inducted into the Army.

(No. 121) Applicant suffers from a kidney problem which causes blood to be presented in his urine. He is deeply in debt because of his family's medical problems.

(No. 7590) After being discharged, the applicant worked several places, the latest being for a large industrial company. He was hospitalized for Nervous Disorder and remains under out-patient, psychiatric care. His emotional difficulties caused him to terminate the above described employment.

(No. 188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared a brotherly relationship, was killed while the latter was awakening applicant to start his guard duty. The platoon had set up an ambush point because they had come upon an enemy complex and the platoon leader was mistaken for a Viet Cong and shot by one of his own men. This event was extremely traumatic to applicant, and he experienced nightmares. In an attempt to cope with this experience, applicant turned to the use of heroin to which he became addicted. During his absence, he overcame his drug addiction only to become an alcoholic. After obtaining help and curing his alcoholism, he turned himself in.

(No. 74) Applicant states that he started drinking when he was eleven years old, feels that he has had a serious drinking problem, has attempted to secure assistance, but was not able to follow through. Most of his juvenile and adult offenses appear to be related to excessive drinking.

(No. 3284) Applicant stated, at the time of his discharge request, that he had always had a problem with his heel which bothered him so much during Basic Training that he knew he could not make it. He stated in his medical records that it had been operated on when he was 8 years old.

(No. 3478) Applicant suffered brain damage as a result of a car accident when he was 6 years old, and experiences severe pain in his chest and back, occasionally loses consciousness, his sense of balance, and sight in both eyes.

(No. 3473) Prior to his enlistment, the applicant attempted suicide by shooting himself in his left chest with a rifle. According to Army medical reports, the applicant is emotionally unstable, and one doctor stated that the applicant was not mentally competent during his period of service. After his discharge, the applicant went home to his father who was so concerned about applicant's mental state that he had applicant committed to a state mental institution.

Mitigating Factors: 4.

Employment and Other Activities of Service to the Public. This factor includes employment prior to, during, or subsequent to the qualifying offense. The employment can be, but need not be, comparable to alternative service under the clemency program; for example, it may include hospital work, police work, assistance to the underprivileged, or church missionary work. This factor also includes work performed as a condition of probation. The period of service must be at least several months, but a summer job would be enough to qualify. If wages are paid for the service, this factor is less likely to apply in non-probation cases. The period in which this work is performed under conscientious objector or judicial order not only affects the calculation for baseline alternative service, but also makes this factor apply.

Employment and Other Activities of Service to the Public

(No. 2304) Applicant performed 6 months of alternative service at a state hospital for the mentally retarded.

(No. 3258) As a condition of probation applicant did volunteer work for a local church under the supervision of the pastor. He also volunteered his time to help impoverished potato farmers harvest their crops.

(No. 3384) As a condition of probation, applicant worked full-time for Goodwill Industries, a non-profit organization which provides jobs for disabled citizens. Applicant managed a store for the organization and received only a token salary.

(No. 583) Applicant has spent the bulk of his time, while in and since leaving school, teaching handicapped and impoverished children.

(No. 142) As a civilian, applicant did a great deal of undercover work for the local police and sheriff's department in his home town.

(No. 171) While applicant was AWOL, he worked as the music director for a number of free concerts and shows which were designed to attract underprivileged, inter-city youths and to serve as a preventive measure against juvenile crime and drug abuse. In addition, he contributed his talents to projects of his home town's youth musicians Association.

Mitigating Factors: 5.

Service-Connected Disability. This factor indicates some long-term or permanent physical or mental injury resulting from military duty. Combat wounds are included only if they result in permanent disabilities (in which case both this factor and Mitigating #16 apply). Also drug-related problems arising during military service are not included in this factor (but are included in Mitigating #3). It is not necessary that the injury satisfy the disability requirements of the Veterans' Administration.

Service Connected Disability

(No. 5963) Applicant suffered a serious back injury while in the Army. After a back operation, he was returned to only limited duty.

(No. 9402) The applicant, while undergoing weapons training, was injured while operating a 155 mm Howitzer during a fire mission. He was admitted to an Army hospital for emergency surgery which resulted in the partial amputation of his right middle finger.

(No. 13418) During one of applicants combat missions, a hostile mine explosion caused him to suffer leg and ear injuries. As a result of his hearing loss he was restricted from assignments involving loud noises.

(No. 4048) Applicant was wounded in the leg and has a permanent disability in that one leg is 3 inches shorter than the other.

(No. 6869) Applicant contracted meningitis during his basic training. His legs, particularily his left leg, continued to give him trouble thereafter as a result.

(No. 7094) Applicant lost his index finger of his right hand while changing a tire on the last day of leave before entering aviation mechanic's school. He was not allowed to attend the school.

(No. 11229) Applicant fell into a foxhole and injured his right knee. Surgery was performed and a Medical Board gave him a rating of a permanent minor impairment.

(No. 5233) Applicant was medically evacuated from Vietnam because of malaria and an acute drug induced brain syndrome. Since his discharge, he has been either institutionalized or under constant psychiatric supervision.

Mitigating Factor: 6.

Extended Period of Creditable Military Service. This factor reflects the length of an applicant's military service, excluding time spent AWOL or in military confinement. It bears no relationship to the quality of an applicant's military service (See Mitigating Factor #14). If the service period is less than 6 months, this factor does not apply; if between 6 months and one year, it is "weak"; and if over 1 year, it applies in full force.

Extended Period of Creditable Military Service

(No. 6035) Applicant had 7 years, 11 months, and 12 days creditable service.

(No. 13838) Applicant had 2 years, 11 months, and 22 days creditable service, including tours in Germany and Vietnam.

(No. 9954) Applicant had 2 years, 11 months, 16 days creditable service during which he had 3 NJPs, 1 Summary Court Martial, and 1 Special Court Martial.

(No. 7104) Applicant had 1 year 10 days creditable service, although he was only in the service for 6 months and 14 days before beginning the first of 6 AWOLs for which he was court martialed. The time between AWOLs counted as good time.

(No. 9356) Applicant had 11 months and 10 days creditable service, including 2 months between AWOLs. (weak)

(No. 7842) Applicant had 7 months and 16 days creditable service, 5 months of which occured before the first AWOL. (Weak)

Mitigating Factors: 7.

Tours of Service in the War Zone - This factor is applicable in cases where the applicant has served a minimum of three months in Vietnam or on a Navy Ship that had a sea patrol off the coast of Vietnam. It can be applied where the applicant had not completed a tour, but while on authorized leave from Vietnam assumed an unauthorized absence status. Shorter periods of Vietnam service are not covered, unless the applicant was injured in Vietnam or transferred out of the war zone by the military service for reasons other than serious military or non-military offenses (including AWOL offenses).

Tours of Service in the War Zone.

(No. 5144) During his initial enlistment, applicant served as a military policeman and spent 13 months in that capacity in Korea. He then served two tours of duty in Vietnam, as an assistant squad leader during the first tour and as a squad leader and chief of an armored car section during the second.

(No. 4470) Applicant served in Vietnam from 7 Oct. 67 to 11 Nov. 68.

(No. 6941) Applicant served in Vietnam with the 101st airborne as a light weapons infantryman . His tour lasted 4 months, 22 days. From 17 december 1967 until 8 May 1968, he returned to the United States on emergency leave. Applicant stated that he went AWOL because he could not face going back to Vietnam, due to the incompetence of his officers and the killing of civilians.

(No. 9491) The applicant served in Vietnam three months, from 4 September 1967 through 4 December 1967, in a combat status. While in Vietnam, he was given emergency leave back to the United States because of the death of his mother. Applicant overstayed his leave and became AWOL on 5 January 1968. He was apprehended shortly thereafter.

(No. 1817) Applicant saw service in Vietnam for a period of 2 months, 13 days. He served as a combat medic. While in Vietnam, he broke his ankle. He was operated on and was evacuated for rehabilitation.

(No. 9894) Applicant served in Vietnam from 23 August 68 to 3 May 1969 as a mortar specialist and participated in two combat campaigns. On 25 Mar 69 he received fragment wounds necessitating evacuation to Japan and then the U.S.

(No. 8528) Applicant was wounded after 3 months in Vietnam requiring two operations and prolonged convalesence.

(No. 14514) Applicant served aboard the USS Buchanan from Jan. 68 to July 68 off the coast of Vietnam.

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Mitigating Factors: #8

Substantial Evidence of Personal or Procedural Unfairness. This factor does not apply to any denial of conscientious objector status (which is covered by Mitigating #9). It does apply to other examples of unfairness on the part of either the Selective Service or the military. The factor includes, but is not limited to, the following situations:

(a) Denial of a Selective Service deferment, exemption, (other than a C.O. exemption), or postponement of induction, on grounds that are technical, procedural, improper, or which have subsequently been held unlawful by the judiciary.

(b) Irregularities resulting in the induction or enlistment of an applicant who should never have been in the military in the first place.

(c) Attempt by the applicant to resort to legitimate remedies (such as hardship and administrative discharges, compassionate reassignments, and emergency and regular leave) to solve his difficulties, followed by a denial of those remedies on technical, procedural, or improper grounds, or grounds which have subsequently been held unlawful by the judiciary.

(d) Improper denial of pay or other benefits,

(e) Failure to receive proper leadership, advice, or assistance.

(f) Unfair military policies, procedures, or actions sufficient to produce a reasonable loss of faith in or unwillingness to serve in the military.

(g) Racial discrimination.

(h) Instructions by a superior to go home and await orders which never arrive.

(i) Inducing or misleading the applicant into requesting a discharge in lieu of court martial, such as by promising him a general discharge.

In any of the above situations, if the legitimate demands of the military outweigh an applicant's personal needs, this factor may not apply.

Substantial Evidence of Personal or Procedural Unfairness

(No. 9421) Applicant was denied both C.O. status and a hardship deferment solely on the grounds that he had applied after receiving induction orders. Applicant had a sincere and deep-rooted philosophy of non-violence which might have qualified him for C.O. status, and his father had both brain damage and a drinking problem which might have qualified him for a hardship discharge. (Mitigating Factor #9 also applies)

(No. 2462) Applicant was classified 1-Y and then reclassified 4-F. Applicant states that he enlisted with the cooperation of his probation officer and the Army recruiter.

(No. 222) The applicant was inducted under Project 100,000. He had stated that he had previously been rejected by the Marines and had failed the Army's mental test, but claimed that his papers had been changed so that he would qualify.

(No. 4498) A chaplain trained in psychology indicated that applicant had a severe character disorder or neurosis when he entered the service. Had it been detected, applicant would not have been allowed to enter the service.

(No. 227) Applicant suffers from a physical disability of the lumbar spine, an apparent birth defect. The defect causes the applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the induction station. Hie disclosure was ignored, although such a condition is an accepted basis for rejection for induction.

(No. 13967) Applicant was rejected in 1967 because he could not pass the mental test. At the time he enlisted he had a 3-A (hardship deferment) and could not have been drafted.

(No. 191) Applicant commenced his absence from a leave status because of his father's failing health and his mother's poor economic prospects. He had applied twice for hardship discharges prior to his offense. While AWOL his father died of a stroke on 28 Aug. 1972, leaving his mother with a pension of $22 a month. She was a polio victim and was unable to work.

(No. 165) Applicant stated that he received a letter from his grandmother in which she indicated her need for further financial support and the fact that her home was in a state of disrepair, bordering upon inhabitability. Since his take home pay was insufficient to sustain both himself and his grandmother, he went to his commanding officer for help. Applicant was told that he had no problem and that all he wanted was to get

(No. 454) Applicant applied for a hardship discharge in January 1967 because his wife was a deaf mute and had given birth to their second child while he was in basic training. His application was denied.

(No. 215) Applicant relates that he went AWOL because he was having family problems. His Army pay record was in disorder, which resulted in his not being able to support his family. He testified that he attempted to obtain an administrative discharge from the Army before going AWOL,but his request was denied.

(No. 13653) While in Vietnam applicant submitted a request for compassionate reassignment to Puerto Rico which was denied because the statement was not substantiated by medical evidence. When the medical evidence was later submitted,the request was denied because the problems were chronic in nature. However, a 30-day leave was granted. When home on leave,applicant discovered that his wife was mentally ill and unable to care for their child. His parents were also having serious emotional problems. Applicant tried again to arrange a transfer but was told he would have to return to Vietnam and iron out the problem there. Applicant remained in Puerto Rico in an AWOL status.

(No. 10316-) Applicant's family was being evicted from their apartment for failure to pay rent caused by the Army's failure to pay the applicant. Applicant requested emergency leave but was denied . He then went AWOL. Applicants second AWOL also occured after his request for leave to settle family problems was denied.

(No. 3168) Applicant was advised to apply for a hardship discharge and was provided assistance in filling out the necessary forms by the Red Cross. When applicant attempted to file the hardship discharge papers, the papers were thrown in the trash by the First Sergeant, who also reprimanded the applicant for being a coward. As a result of such treatment, applicant became disillusioned with the Army and went AWOL.

(No. 10738)- Applicant received a summary court martial for refusing to take part in a parachute jump. Although medical records show applicant had a broken rib, his commanding officer would not excuse him because his medical profile was not available at the time. Applicant had planned to contest his discharge but relented when his commander promised him a general discharge. Applicant received an undesirable discharge.

(No. 172) Applicant attributed his absence to financial and family problems. He was told that he was not receiving any pay because he had been overpaid by $1500 which was allegedly sent to his wife by allotment. Applicant testified that neither he nor his wife received this money and that one of his children was also in the hospital at that time with bronchial asthma.

(No. 4188) Applicant's immediate Commanding Officer recognized applicants severe financial problems and recommended a general discharge. Applicant received a UD.

(No. 4603) A summary statement in applicant's file indicates he signed a letter requesting discharge in lieu of court martial and was advised of the implications. Applicant states he did no such thing but that his commanding officer had told him to sign some papers. His records contain no copy of either a letter requesting discharge or statement acknowledging that he had been advised of his rights and the implications of the discharge. Applicant submits that he would have demanded a trial instead. He appealed his discharge within two days of receiving it.

(No. 10887) Applicant was punished for failing to obey a superior NCO. Applicant states that this NCO had made derogatory remarks about applicant's brother who had died in Vietnam. Applicant felt his punishment was unfair, so he went AWOL.

(No. 397) Upon entering the Army, applicant complained of stomach pains, and it was subsequently discovered that he had a duodenal ulcer Shortly thereafter, his condition worsened and he was hospitalized for ten days. Applicant wanted to remain on the same diet that he was on in the hospital but this was not available at his post mess hall. He was advised by a doctor to eat in the post cafeteria which he did not think was right. Applicant then went AWOL. Applicant recently suffered another bleeding ulcer attack, which required hospitalization.

(No. 305) Applicant served as a rifleman in Vietnam, and he was in combat for almost an entire year. He left Vietnam on his own a few days before his tour of duty was up, because he was not taken out of combat within the customary seven days prior to outprocessing. He felt that his Company Commander was making an exception with him and that it was not justified.

(N6. 4977) Applicant reenlisted at the end of his Vietnam Tour for Japan. He took a routine urinalysis test for narcotics which showed positive; a subsequent hospital test was negative. Nonetheless, applicant was sent to the United States and assigned to a supply squadron there, despite outstanding orders for Japan. He subsequently

began an acrimonious relationship with his First Seargeant who, among other things, refused to support applicant's orders to subordinates, denied him leave to get married, and refused to let him discuss his personal problems with authorities. There was a racial overtone to the problem as applicant was the only black NCO on the Post. Applicant was promised a general discharge but received an undesirable discharge in lieu of court martial.

(No. 229) Applicant was enthusiastic about his induction into the Army, believing that he would have financial security and would receive a technical training. His lack of physical agility and difficulties in reading and writing impeded his progress in basic training . Consequently, he was recycled for his failure to achieve passing training test scores. It took him 9 months to finish basic training (normally a six-week stint). After basic, applicant was sent to another base for advanced individual training as a tank driver. He continued to have learning problems in advanced training. Applicant attributes his absences to frustration and discouragement caused by his inability to learn and to earn the respect of his associates.

(No. 506) Applicant was ordered to report to a new base for assignment to Europe. While he was waiting at Ft. Dix his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems, and he requested Red Cross help and emergency leave to deal with the difficulty. His family was put out of their apartment, was forced to live in their automobile , and had no food. He traveled to the Pentagon and was reportedly told to go home to await the results of a telegram to Europe regarding his pay records.. He called back twice, but reportedly no one knew of his situation nor had heard of him. He reported he was committed to his course of action, so he continued to stay at home, which resulted in his being AWOL. He found a job but was still forced to declare bankruptcy.

(No. 433) The applicant contracted a rash and fever. He went to Fort MacArthur for medical treatment and was ordered to stay at home until he had recovered. He was told to expect orders following his recovery. No new orders were received, so he contacted his Congressman to find out what had happened. He received a reply that the Army had no information about his movement. He contacted an Army Inspector General following that, but never heard about his orders. There is some evidence he thought he would have been eligible for a medical discharge related to curvature of the spine.

Mitigating Factor: #9

Denial of Conscientious Objector Status. This factor is applied when a draft board or military review board denied a Conscientious Objector classification on grounds that were technical, procedural, improper, or under circumstances previously or subsequently held unlawful by the judiciary. The Board looks for some evidence that the C.O. claim was sincere and not frivolous.

Several Selective Service situations are particularly important. First, prior to June 1970 it was not a valid C.O. claim if the person alleged personal, moral, or ethical values against war or killings not founded on religious tenets. The Welsh case reversed this rule. Applicants denied C.O. status prior to Welsh qualify for this factor, even if no procedural unfairness occurred , on the grounds that the denial of the C.O. claim was "technical".

A "late-blooming" realization of C.O. will be presumed legitimate. As the U.S. Supreme Court stated in Ehlert. "The very assertion of crystallization just before induction might cast doubt upon the genuineness of some claims, but there is no reason to support that such claims could not be every bit as bona fide and substantial as the claims of those whose conscientious objection ripens before notice or after induction." The Board looks closely at the evidence whenever a C.O. claim is made, and if it finds sincerity, this factor applies.

If this factor is found in conjunction with Mitigating Factor #10, a strong presumption exists that applicant will receive a pardon without any alternative service.

GERALD R.

Denial of Conscientious Objector Status

(No. 14) Applicant applied for C.O. status after his student deferment had expired. Applicant opposed the Vietnam War on an ideological basis, and he sincerely believed he was a conscientious objector. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Applicant's request for C.O. status was denied, consequently, he refused induction.

(No. 53) Prior to the expiration of his student classification, applicant applied for conscientious objector status. The Board denied this request, as it did not feel his beliefs were deeply and sincerely held. The Board also noted that he did not claim C.O. status until he no longer qualified for any form of deferment. The applicant appealed the decision of the local board and the local board's decision was upheld. He was ordered to report for induction, but he refused to submit.

(No. 4217) Applicant was a Jehovah's Witness. Within one month of his registration for the draft, he applied for C.O. status. This petition was denied, presumably because applicant was too much of a novice in Jehovah's Witnesses, not having been baptized nor functioning as a minister of this religion.

(No. 1778) Applicant refused classification as 2-S in view of his moral convictions but had never filed a claim as a conscientious objector until after his refusal of induction. Upon advice of counsel, applicant then requested C.O. status. The Board refused to reopen classification to consider the claim on the grounds that there was no indication of a change of circumstances beyond the control of the registrant.

(No. 10402) For a year and a half after he was drafted, the applicant tried to obtain C.O. status, because he did not believe in killing human beings. He talked to his Captain and the Red Cross. Neither found his aversion to taking human life to be persuasive. The applicant is minimally articulate but states that even if someone was trying to kill him, he could not kill in return. When he had exhausted the applications for C.O. status and was scheduled for Vietnam, he went AWOL.

(No. 7506) Applicant was inducted in 1967. Applicant applied for C.O. status in 1969 and was given orders for Vietnam before his application was reviewed. He complained to his commanding officer who ordered him to Vietnam nevertheless. Applicant then went AWOL to seek outside help. He was advised by civilian counselors that he remain AWOL for at least 30 days so that he would be able to bring to the attention of a court martial the illegality of ignoring the C.O. application. The court martial refused to enter copies of the C.O. application on the grounds that the applicant's copies could not be introduced into evidence because they were not certified (Mitigating Factor #8 also applied)

(No. 8549) After the applicant was inducted, he filed a request for a 1-AO classification for non-combatant duty. He described his belief in support of his C.O. claim by claiming "man does not have the right to kill man," and that "under no circumstances" did he believe in the use of force.

(No. 769) Applicant felt he could not morally participate in war. He did not apply for C.O. status before because he was told he probably would not qualify. Three days after induction he reenlisted for 3 years to go to Preventive Medical Specialist School as an alternative to combatant duty because he felt he owed an obligation to his country. Applicant also had psychological and emotional problems, and the conflict between his moral principles and duty intensified them.

(No. 10402) For a year and a half after he was drafted, applicant tried to obtain C.O. status, because he did not believe in killing human beings. Applicant states that even if someone was trying to kill him, he could not kill in return. He went AWOL when scheduled for Vietnam.

(No. 3158) Applicant became a member of the Jehovah's Witnesses while in the service. He applied for discharge as a conscientious objector, but his request was denied.

(No. 3285) Applicant decided he could not conscientiously remain in the Army, and went to Canada where he worked in a civilian hospital. According to a statement prior to his discharge, applicant states "In being part of the Army I am filled with guilt. That guilt comes from the death we bring. The tremendous ecological damage we do, the destruction of nations, the uprooting of whole families plus the millions of dollars wasted each year on scrapped projects and abuse of supplies. I am as guilty as the man who shoots the civilian in his village...My being part of the Army makes me just as guilty of war crimes as the offender."

Mitigating Factors: 10.

Evidence that an Applicant Acted for Conscientious, Not Manipulative or Selfish Reasons - This factor applies when it can be shown from the statements and actions of the applicant that he did not report for induction or alternate service, or that he went AWOL out of sincere, ethical or religious belief. For example, beliefs of Jehovah's Witnesses or Black Muslims which compel an individual not to perform military service, qualify an applicant for this mitigating factor, as does any evidence of deeply held opposition to the Vietnam War. An applicant need not have formally requested conscientious objector status for this factor to apply.

Evidence that an Applicant Acted for Conscientious, Not Manipulative or Selfish Reasons -

(No. 30) Applicant grounded his resistance to induction on his religious beliefs as a registered Muslim. He stated that conscientious objector status was unacceptable to him and that he would accept imprisonment. He did indicate a willingness to perform alternative service of national importance after conferring with his religious advisor.

(No. 72) Applicant pled not guilty and made no conscientious objection to service on original registration. He initially had an II-S. He then requested C.O. status which was denied. Defendant states that he is a pacifist and objects to killing and to war.

(No. 9157) Because of the applicant's belief that 'peace among human beings is of the ultimate necessity,' he became involved in anti-war demonstrations.

(No. 91) As a Jehovah's Witness applicant applied for and received C.O. status from his local draft board, which subsequently ordered him to perform civilian alternative service. He failed to report for such duty. Applicant contended that he was a minister of the Jehovah's Witness faith, and that to accept alternative service under orders from Selective Service would be to compromise his religious belief.

(No. 2742) While in college, applicant came under the influence of and actually worked with a group of Quakers. It was then that he developed conscientious objection to war.

(No. 11066) Applicant has been described as a person who is both sincere in his beliefs and of uncompromising moral principle; he repeatedly stated his willingness to go to jail for what he believed to be right. Applicant's wife reports that he applied for C.O. status but was refused on grounds that he applied after his induction date.

(No. 9838) Applicant returned to the U.S. from Vietnam with orders to report to Fort Knox to train armor crewmen going to Vietnam. He did not want this assignment because he had "come not to believe in what was going on over there." He said, "I was not exactly a conscientious objector because I had done my part in the war, but I had decided that I could not train others to go there to fight."

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Mitigating Factors: 11.

Voluntary Submission to Authorities. This factor indicates that the applicant voluntarily turned himself in, even if only by telephone, when he returned from his last qualifying offense. Whether prior qualifying offenses ended in surrender is irrelevant. For civilians, the factor indicates that an applicant voluntarily surrendered to authorities before his trial, even if he had been a fugitive before his surrender. It applies even if he submits pursuant to a warrant or a subpoena. In the absence of any evidence as to voluntary submission or apprehension, neither aggravating factor #12 (Apprehension) or mitigating factor #11 applies.

Voluntary Submission to Authorities

(No. 4378) Applicant appeared in Court for appointment of Counsel.

(No. 4380) Applicant voluntarily surrendered himself for trial in response to letters from the court and from retained counsel.

(No. 4563) Applicant failed to keep the Draft Board informed of his address from 28 Oct. 1969 to 8 Mar. 1971. He informed the draft Board of his address on 31 May 72 and was arrested 21 June 1972 without offering resistance.

(No. 1407) Upon notification by his parents that a warrant for his arrest was about to be issued, he submitted himself to the U.S. marshal in the locale where he was employed.

(No. 1651) While in New Zealand he decided to return to the U.S. to face the charge of failure to report for induction.

(No. 14040) When AWOL, applicant always went home to his parents who either turned him in or sent him back.

(No. 9783) Applicant was a French Canadian who was drafted. He went to Canada twice. During his second AWOL he wrote to request a discharge and was told he would have to return to the Army. He did so, was charged, and requested a discharge in lieu of court martial.

(No. 9507) Applicant went AWOL seven times, at least one of which was terminated by apprehension. The last AWOL, however, was terminated by surrender.

(No. 11373) Applicant went AWOL and was apprehended by civilian authorities. At his court martial he pleaded guilty but went AWOL again before sentence could be imposed. He surrendered after that AWOL. At the second court martial he was given a BCD.

(No. 11095) Applicant realized he should resolve his difficulties with the military so he voluntarily turned himself in.

(No. 7621) Applicant surrendered to the FBI.

(No. 3483) The applicant telephoned the FBI and indicated that he was then living in the Detroit area. He was then arrested.

Mitigating Factors: 12.

Behavior which Reflects Mental Stress Caused by Combat. This factor is present when an applicant's offense resulted from any emotional or psychological after-effects of being in Vietnam. Some evidence is necessary to document this, such as a traumatic incident or a drastic change in a behavior pattern after leaving the war zone. Combat-induced drug use would qualify an applicant for this factor, if it led directly to his AWOL.

Behavior Which Reflects Mental Stress Caused by Combat

(No. 188) During applicant's tour in Vietnam, his platoon leader, with whom he had a brotherly relationship, was killed while awakening the applicant to start guard duty. This event was extremely traumatic, and applicant began to have nightmares. In an attempt to cope with this experience, applicant turned to the use of heroin and became addicted. Because he was afraid of detection, applicant went AWOL after returning to the U.S.

(No. 5233) Applicant participated in 17 combat operations in Vietnam. He was medically evacuated from Vietnam because of malaria and an "acute drug induced brain syndrome". That his behavior reflects mental stress caused by combat can be inferred from the fact that applicant commenced his AWOL offenses shortly after being released from hospitalization and the fact that subsequent to his discharge he has either been institutionalized or under constant psychiatric supervision.

(No. 4250) When applicant arrived in Vietnam he was a young E-5, without combat experience. He was made a reconnaissance platoon leader, a job normally held by a commissioned officer. Applicant started going out on operations immediately. to accomplish this mission he began to take methadrine to stay awake. He noticed the methadrine making a marked change in his personality; he began jumping on people, his nerves were on edge. He started to take opium tinctura to counteract this effect, "to mellow him out", and became addicted. After Vietnam he was transferred to Germany where he kept his addiction secret although the problem was beginning to grow out of control. Applicant was sent back to the U.S. with a 45 day leave authorized. Applicant planned to enter a private German drug abuse clinic within 3 to 4 weeks but the clinic could not accept him immediately. He made the decision to wait in an AWOL status rather than go back as an addict. He was continuously put off until he was just drifting around and finally apprehended by German police.

(No. 4364) Applicant's basic training and AIT records reveal no difficulties adjusting to Army life. Applicant's term in Vietnam was also free of incident, but after returning to the U.S. he was unable to adapt to spit and polish regimentation. Applicant began to believe that his service in Vietnam had been for naught.

Mitigating Factors: 13.

Volunteering for Combat or Extension of Service while in Combat. This factor applies if an applicant either volunteers for a first or subsequent Vietnam tour, volunteers for a combat assignment while in Vietnam, or volunteers for re-enlistment for an extended Vietnam tour.

Volunteering for Combat or Extension of Service While in Combat.

(No. 1626) Applicant served two tours in Vietnam then requested a third tour. At the end of his third tour he extended for 6 months. He went AWOL after his request for a second extension was denied.

(No. 5899) Applicant received his second Honorable Discharge and immediately reenlisted for the specific purpose of being transferred to Vietnam for 3 years.

(No. 12344) While in Germany, applicant volunteered for field duty in Vietnam.

(No. 9650) Applicant worked in supply and transportation in Vietnam for 32 months. He went to Vietnam in August 68. He extended his tour until Jan 70 when he reenlisted for Vietnam.

(No. 9235) Applicant reenlisted for Vietnam. At the end of his normal tour, he extended for six months.

(No. 8806) While in Vietnam, applicants enlistment expired. He reenlisted, continuing to serve in Vietnam and finally extending for another six months.

(No. 7666) Applicant was extended past his normal date to return from Vietnam.

(No. 6728) Applicant went AWOL when his request to be transferred to Vietnam was denied.

(No. 2819) Applicant re-enlisted for Vietnam but never reported for overseas assignment because of personal problems.

Mitigating Factors: 14

Above Average Military Conduct and Proficiency or Unit Citations - This factor normally indicates the conduct and proficiency (efficiency) ratings received before or after his qualifying offense by an applicant except for those poor ratings which demonstrably resulted from an applicant's AWOL offenses. In measuring this factor ratings are averaged and compared with the standards shown below:

The Army reports conduct and efficiency ratings on a one word description basis (excellent, good, unsatisfactory). Excellent ratings are required.

The Navy reports conduct and proficiency ratings on a scale of 0 to 4.0. Average conduct scores above 3.0 and average proficiency scores above 2.7 are sufficient.

The Marine Corps reports conduct and proficiency on a scale of 0 to 5.0. Average scores above 4.0 are sufficient.

The Air Force reports a series of ratings on a scale of 1.0 to 9.0. Average scores above 7.0 are sufficient.

If the applicant's creditable service is less than six months, this factor does not apply. It applies in a "weak" form for service between six months and one year. Over one year of creditable service makes the factor apply in full force.

Even if the applicant does not have above average ratings, the factor will apply if the applicant earned a unit citation. In the absence of either above average ratings or unit citations, the Board may choose to give weight to letters of commendation, decorations other than for valor, and other indications of applicant's performance.

Above Average Military Conduct and Proficiency and Unit Citations

(No. 11095) Every conduct and efficiency rating of the applicant while he was in the Army was excellent until his first AWOL.

(No. 14046) While in the Army, applicant received three excellent conduct and efficiency ratings.

(No. 7537) While in the Army, applicant had all excellent ratings for conduct and efficiency both in Germany and Vietnam. He also earned the Vietnamese Presidential Unit Citation with palm.

(No. 7298) While in the Army, applicant received excellent conduct efficiency ratings except when he was AWOL. He also received numerous awards and decorations.

(No. 8388) Applicant's average trait rating for performance, appearance, conduct, adaptability, and leadership potential was 3.6 in the Navy, which earned him a promotion to E-3.

(No. 11174) While in the Navy, applicant received one rating of 3.6 in conduct prior to his initial AWOL offense.

(No. 6683) While in the Navy, applicant's enlisted evaluation ratings were 3.2 or higher until the last ones, which ranged from 2.8 to 3.6

(No. 3800) While in the Marines, applicant had average conduct and proficiency ratings of 4.6 before his offenses.

(No. 5384) While in the Marines, applicant's average conduct and proficiency ratings were 4.1 and 3.9 respectively.

(No. 4470) Although applicant only received average conduct and proficiency ratings of 3.8, while in the Marines he was awarded a Presidential Unit Citation.

(No. 9406) No conduct/efficiency ratings are reported, but applicant has one letter of commendation in his file.

Mitigating Factors: 15.

Personal Decorations for Valor - Some decorations (such as the Medal of Honor, Distinguished Service Cross (Army), Navy Cross, Air Force Cross and Silver Star) are awarded only for valor. Other decorations (such as the Legion of Merit, Bronze Star, Air Medal, and Commendation medals) may be considered as decorations for valor only if accompanied by a "V" device, which is normally recorded immediately after the award in the personnel files. Vietnamese awards for gallantry are included under this factor if awarded to the applicant (normally indicated by a palm device). Unit citations and awards without the valor citation fall under Mitigating Factor #14. Purple Hearts qualify the applicant for Mitigating Factor #16. The Awards memo (CLR Vol 1, #1) provides further clarification of this factor.

Personal Decorations for Valor

(No. 1751) Applicant received the Silver Star.

(No. 10612) Applicant received the Bronze Star with "V" device and Oak leaf cluster and the Vietnamese Gallantry Cross with Bronze Star.

(No. 14488) Applicant received the Army Commendation Medal with "V" device.

(No. 7621) Applicant received the Naval Commendation Medal with "V" device for combat.

(No. 14075) Applicant received the Vietnam Gallantry Cross with Palm.

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Mitigating Factors: 16.

Wounds in Combat - This factor indicates that an applicant suffered bodily injury while in Vietnam. A Purple Heart is sufficient to bring about this factor, but is not necessary if the wound is otherwise corroborated. Any injury, however slight, suffices to bring about this factor. If the injury resulted in a permanent disfigurement or disability, then Mitigating Factor #5 also applies.

Wounds in Combat

(No. 11013) Applicant served in Vietnam from 26 March 1967 to 22 March 1968 as an infantryman and grenadier. On 12 May 1967, applicant was wounded when he found an enemy booby-trapped grenade . He told the men in his platoon to get down but the grenade exploded in his hands as he attempted to destroy it. He was awarded the purple heart.

(No. 8386) Applicant states he received "light wounds"to his left leg due to an exploding shell. Hospital personnel removed small fragments from the affected area and he returned to duty immediately. He suffered very little pain and no after effects or complications.

(No. 8739) While in Vietnam, applicant was wounded by contusions to the body when the Sheridan Tank he was driving on a combat operation hit a hostile mine.

(No. 7863) Applicant was wounded in action, but never received a purple heart.

(No. 14046) As a result of hostile action, applicant received a fragment wound for which he received the purple heart.

(No. 13348) During his first tour in Vietnam applicant was wounded in the hand, necessitating his evacuation to the U.S.

(No. 9894) Applicant received fragment wounds to his face, right forearm and thumb from an exploding shell while in combat. He was evacuated to Japan and then to the U.S. Upon his return to the U.S., he was restricted in the type of assignments he could perform: no handling of heavy equipment, no overhead work, or no pushing or pulling. He continues to complain of numbness and pain in his right forearm and thumb.