The original documents are located in Box 4, folder "Final Report - Draft, 8/29/75 (2)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

After the case summary was completed and reviewed by Quality Control, it was mailed to the applicant and docketed for Board review. Originally, it was the Board's intended policy to wait 30 days before hearing the case, in order to allow the applicant time to respond to the summary. Because the case preparation never ran very far ahead of Board consideration, the cases were heard prior to the expiration of this period. In order to accommodate this change, the rules provided that the submission of any fact which could possibly effect the preliminary result would cause the case to be referred to a new panel. To guard against penalizing an applicant from this double review, the second panel was barred from recommending a more severe result. The only exception to this was if the subsequent information disclosed a serious felony which the Board could not properly ignore.

Board Consideration

The entire case preparation stage was, of course, preliminary to the presentation and review of the case by the Board members. In the early, formative meetings, the Board briefly considered alternatives of delegating some evaluative role to the staff. This suggestion was raised again when the large influx of cases required us to reconsider our procedures. From the start, however, the Board was unanimous in the view that the full responsibility for review and recommendation should lie with it alone. To ensure the integrity of this process, and to preserve the objectivity of the staff attorney presenting the case, the Board also rejected the idea of having the staff make preliminary recommendations as to the proper case disposition. On occasion, Board members asked the staff attorney involved in the case for a judgment on particular facts, primarily because the attorney was closely familiar with the entire record. But this happened infrequently, and staff attorneys were continually reminded that they were not advocates

for or against the applicant.

The Board did not consider itself as operating in an adversary setting, so its deliberations were not conducted in that form. An efficient adversary proceeding demands vigorous representation on both sides, cross-examination, and strict requirements of proof and rebuttal. This was totally inappropriate to a clemency proceeding, with neither our applicants nor their counsel present during almost all case hearings. By rejecting an attorney approach, the Board was not required to be formal in its proceedings, and its deliberations were not as brutal and competitive as are ordinary trials. The purpose of the President's program was to heal wounds and to reconcile, and the Board's approach was consistent with that goal.

Originally, cases were presented to the Board, with the attorney giving a formal recitation of the facts of the case. This procedure proved impractical when the Board's docket expanded in January, February and March. Thereafter, with the increase of the Board from nine to eighteen, and the case-preparation staff from about a dozen to 300, the Board changed its procedure. Members sat in panels of 3 or 4 which were changed weekly, and sometimes more often. In advance of each panel meeting, case summaries were distributed to each panel member. On an average week, each panel was responsible for 100-125 cases each day, and a weekly total of 300-450. This usually meant two days of reading cases for every three days of decision. Panels were sometimes scheduled such that Board members would meet more often, and case-reading was done on weekends. From June through late August, an average Board member met in panels or in plenary session or to read cases 4 days each week. We calculate that some members heard as many as 5000 cases, with the average member sitting on 3000 cases.

Because each panel member had read the case summary prior to the formal deliberation, an oral presentation was no longer required by the attorney. He was available, however, to submit additional information gathered after the summary had been prepared, to read letters, and to answer questions from the full file. Panel members then compared their views on the applicable aggravating and mitigating factors in the case. Once this was agreed upon, the panel discussed the proper disposition.

Originally the Board was concerned that the change to a panel proceeding would seriously impair its work. However, the advance reading more than counter-balanced the absence of a full recitation. A careful balancing of panel membership resulted in a remarkable degree of consistency among panels. The various procedures we initiated for referrals to the full Board were also designed to ensure a high degree of consistency.

Inevitably fatigue and a large caseload caused problems for each of us. However, after we adjusted to deciding cases in panels and hearing them quickly, our consistency on fairness was not materially affected by these changes. Lengthy discussions did not always shed greater light on a case or improve our understanding of it. In most instances, the relevant factors were not in doubt, and the panel members were in substantial agreement on a recommendation. The vast majority of "easy" cases like this left sufficient opportunities for more lengthy discussions about complicated cases. And where there were any irreconcilable differences in a panel on the treatment of a case, it was presented anew before the full Board. While there is no question that we would have preferred a less hectic and exhausting pace than the continuous schedule we met from June on, we do not believe that our workload resulted in any measurable impact on the efficiency or fairness of our work.

Any Board member could freely refer a case from a panel to the full Board for reconsideration. No case was final until the President had signed a master warrant which included that case disposition. The Board relied on help from a computer to compare each result to the pattern of results for similar cases. Also, any case attorney dissatisfied with any case disposition could flag that case for determination by the Chairman as to whether it should be reconsidered by the full Board. A legal analysis staff reviewed the computer-flagged cases (which included both harsh and lenient cases) and the attorney-flagged cases before they were referred to the Chairman. Altogether, the computer led to the reconsideration of about 300 cases, the case attorneys to another 100, and the unaided Board to 600 more. Altogether, 1,000 cases were reconsidered.

In applying this reconsideration process, the Board was not delegating its referral function to the staff. Actual referrals could only be made by a Board member, who actually could accept or reject the advice of the staff.

Openness, Privacy and Counseling

Three aspects of our procedures deserve special emphasis. Because the Board was concerned about giving the widest possible procedural rights to applicants, we stressed the openness of our proceedings, the privacy of our applicant, and his right to counseling.

The Board process was as open as possible, except for the actual discussion of particular cases. The Board announced its substantive and procedural rules, published them in the Federal Register, and gave special attention to giving them wide public distribution. Our major instructions to staff were also distributed to applicants, and supplementary decisions and precedents were published in a staff publication, the Clemency Law Reporter. The Reporter was made available on request to the public. Board files were

open to the applicant but obviously could not be sent to him. This required the applicant or his attorney to contact someone in the Washington area to examine the records for him. Where possible, information was relayed by phone, and small portions duplicated. For the most part, however, we received few requests for access to file material other than the case summary. The Board did not consider information not also available to the applicant.

Applicants were not advised of the Board's recommendations, since as an advisory body to the President, our advice had to be kept confidential until the President had made his own decisions. Once the President had acted, the result was relayed to the applicant, along with a list of the factors the Board had identified in his case. Obviously, the Board could not describe how each different member had weighed the combinations and we made this clear for the applicant. But the listing plus the summary did inform each applicant how the Board had handled his case. It also gave him a basis for any application for reconsideration he wished to make.

We tried to reconcile the competing demands of open process and our applicants' privacy. Applicants were guaranteed confidentiality, and great care was taken to avoid any identifying information on summaries. The summary itself was sent by registered mail to prevent anyone but the applicant seeing it. Information submitted by the applicant was kept confidential, even from law enforcement agencies. Despite the seriousness of the demand, the Board felt that its promise of confidentiality and the integrity of the clemency process required that no person be put in a worse position because he applied. As it turned out, there were less than a dozen inquiries from law enforcement agencies, and a good number of these were requests to see pre-existing official files. The requirements of privacy meant that the

Board was not able to publish case summaries with dispositions in order to form a pool of precedents for public guidance. To do so would have jeopardized the promise of privacy we made to our applicants. For a brief priod, shorter explanatory paragraphs were prepared describing the decisive characteristics of each disposition. These proved extremely difficult to prepare with precision and were not helpful to other applicants or the press. They were discontinued after a few months in favor of the use of the Clemency Law Reporter to give definitions and illustrations of factors we applied in our considerations.

The requirement of privacy inevitably meant that the public was not well-informed of our proceedings. In only one case did an applicant waive his rights to a closed hearing and request a public hearing with the press present. More such cases would have increased public understanding, but it was not within the Board's province to have them.

Despite the informality and simplicity of our processes, we believed that we had an obligation to encourage applicants to seek legal counseling. This was perhaps our greatest disappointment, because the legal assistance organizations in the country were either unwilling or unable to accept applicants as a regular matter. Although the Board tried to persuade these groups to allow their inclusion on our legal referral lists, economic constraints and philosophic opposition to the program led most to decline, thus leaving willing applicants to proceed on their own resources. This persuaded us to make our procedures as flexible as possible, but there is no question that the lesser educated and disadvantaged could have profited by outside help. This is not to say that no groups cooperated. The Los Angeles County Bar Association represented a large number of applicants and helped many more. A number of veterans groups whi

were publicly critical of the program did not let this stand in the way of their helping former servicemen earn a pardon and a clemency discharge through our process.

Where counseling was available, it did have an impact especially when counsel personal appearance. The Board granted only a conditional right to appear, but the number of requests were never very high. Of _____ requests, _____ were granted. The Board denied _____ appearances only because our decision to recommend an immediate pardon made the request moot.

SUBSTANTIVE RULES FOR DECIDING CASES

INTRODUCTION

In considering the approximately 16,000 applicants who were eligible for the program, we confronted an incredibly diverse array of motivations and situations. In treating applicants as individuals, there was an obvious need to regularize the decision-making process so that we could be confident that we would treat individuals in similar positions equitably.

At the very first meeting in which we began to examine cases, we developed a preliminary set of relevant factors which we announced as important in evaluating cases. As we came upon new circumstances which we deemed important, we added them to our list. This posed no problem of consistency with past decisions. The Board, however, resisted the temptation to change factors once decided, or to add factors previously rejected, since it was obviously inadvisable to apply different rules to later cases. The Board did this only once, in July, when it made drug addiction a qualifying condition warranting the application of Mitigating Factor #3. On a few occasions, the Board added factors to make explicit considerations which it recognized as important and which it had in fact been applying. And, of course, the meaning and application of each factor evolved over-time as they were applied to differing circumstances. In the main, however, the list of factors remained unchanged, and each Board member diligently applied them to each case. We are persuaded that the use of a defined set of factors was instrumental in guiding our decisions, in insuring consistency, and in informing the applicants, the public, and the President of the way we were carrying out our responsibilities.

By using a specific list of aggravating and mitigating circumstances, we feel that we achieved several objectives, several of which have been previously

discussed in this report. Nonetheless, they bear repetition here. First, we were able to give notice to our applicants of the framework within which we considered each application. In other words, we were able to maintain a degree of openness towards our applicants of the framework within which we considered each application. In other words, we were able to maintain a degree of openness in our proceedings. Second, the existence of aggravating and mitigating circumstances forced us as a matter of procedure, to focus on all aspects of an applicant's case and, therefore, to treat him as an individual. Finally, since the factors or circumstances found by us were ultimately communicated to the applicant, it provided individuals with an indication of the basis for our final decision. It also provided a mechanism with which we could reconsider our own decision should the applicant appeal.

The second important device we instituted to guide our decisions was to calculate a baseline period of alternative service for each case. The use of this formula, a starting point in our deliberation, acknowledged the basic difference between our applicants and those eligible for the DOJ and DOD programs. We grounded our calculation on the fact that our applicants had not been fugitives at the commencement of the program, but had already paid a legal penalty for their offenses. They had already received a civilian or military conviction, or a less-than-honorable administrative discharge. In order to reflect the fact that a pardon for a conviction could never be as beneficial a remedy as complete relief from prosecution, in all but the rarest case our formula resulted in a starting-point significantly less than the 24 months which the other two programs used.

In the following pages, we will discuss at some length how we decided on these rules and how we applied them. Because this was the basis of our

work, and because it reflects the differing ways in which each Board member addressed his or her own responsibilities, we feel this section is particularly important.

BASE-LINE CALCULATIONS

The base-line formula, once established, remained unchanged throughout our deliberations. We, like DOD and DOJ, began our calculation with 24 months, the maximum period set forth in the President's Proclamation. This period represents the normal amount of military service which each draftee had been obligated to perform, and the period which conscientious objectors are expected to serve in lieu of military duty. Because many of our applicants had served confinement for their offenses, we took this into account by reducing the base-line by a factor of three months for every month's confinement. The base was further reduced one month for every month of court-ordered alternative service, probation, or parole previously served, provided the applicant had not been prematurely terminated because of lack of cooperation.

This final calculation was subject to three exceptions. First, the baseline was never less than three months in any case. Second, if the calculated base-line was greater than either the judge's sentence or the sentence adjudged at court-martial, that length of sentence became the baseline. Third, in all cases of undesirable discharges, the baseline automatically became three months. The Board adopted this minimum period for administrative discharge cases to reflect the fact that the military authorities had determined these persons' offenses did not warrant the more serious consequences of a court-martial. This approach plus the three-to-one credit for confinement, served to establish an equitable starting point for the different categories of PCB

applicants. 1/

In comparison, both DOD and DOJ used 24 months baselines. Both these programs acted pursuant to the explicit dictates of the Presidential Proclamation 4613. For Justice Dept. applicants, section 1 of the Proclamation stated:

> "The period of service shall be twenty-four months, which may be reduced by the Attorney General because of mitigating circumstances."

Concerning the DOD Program, the Proclamation, in section 2, provided:

> "The period of service shall be twenty-four months which may be reduced by the Secretary of the appropriate Military Department, or Secretary of Transportation for members of the Coast Guard, because of mitigating circumstances."

The Board's approach was possible because both the Proclamation and the Executive Order gave the Board sufficient flexibility in determining appropriate lengths of alternative service. The starting point of 24 months was not made mandatory for us.

1/ Because of the inordinately large number of administrative discharge cases with 3-month baselines, our average baseline figure was _____. If we look only to the cases of persons convicted of military or civilian offenses, the average baseline is _____. Interestingly, the military sentences for AWOL and desertation were significantly lower than those imposed by feferal courts for draft evasion convictions.

In each of the three programs the baseline, or starting period, did not necessarily represent the actual period of alternative service to be assigned the applicant. All three programs, in accordance with the President's desire, created mitigating factors to reduce the baseline. The Presidential Clemency Board because of our reduced baseline, also used aggravating circumstances to raise the baseline in certain cases. The baseline was a mathematical application of several basic principles. Although it provided an equitable starting point, the major determinants in every case were the aggravating and mitigating circumstances.

AGGRAVATING AND MITIGATING FACTORS

The criteria we used were always established and amended by vote of the full Board itself. Our criteria were first formally published in the Federal Register on November 27, 1974, 2/ and comments were solicited from various organizations and individuals with an interest in the clemency-amnesty issue. There were over 40 responses. Since November of 1974, our regulations have been amended twice to reflect changes and additions to the factors. (The regulations of the Board are published verbratim in Appendix_____).

There was considerable expansion of the aggravating and mitigating circumstances over the course of our work. The majority of these additions and mofifications occured with respest to the military applicants. After the Board's public information program, we discovered that the majority of our applicants were former servicemen whose absences were not explicitly unrelated to the Vietnam War. It did not take us long to realize that a fair evaluation of these cased required additional aggravating and mitigating factors which

2/ 39 FR 41351-(1974)

took into account the applicant's entire military record. An examination of our amendments to the rules shows that we went from seven to twelve aggravating circumstances and from eleven to sixteen mitigating circumstances. All but one of these additions were exclusively applied to military cases. 3/

The Board examined its first cases beginning in October 1974, At first, we applied the factors subjectively. However, it soon became clear that we were not evaluating the cases in a consistent manner, and each of us was not aware how other members were assessing the cases. After we had tentatively decided

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The criteria for the DoD clemency program were established in a memorandum dated September 17, 1974, from the Secretary of Defense to the Secretaries of the Military Departments. The criteria for the DoJ program were set forth in a directive dated September 16, 1974, from the Attorney General to all United States Attorneys. Both of these programs had a catch-all provision for other or future criteria. In each case, the other two phases followed the suggested list of factors set forth in the Proclamation.

a few dozen cases, we asked the staff to compare our results. This exercise demonstrated to us that we had to be more specific and controlled in our work. We imposed a more rigorous set of guidelines on ourselves thereafter, making certain that Board members were in general agreement on the presence or absence of aggravating and mitigating factors before weighing them and coming to a conclusion.

Once the Board had discussed and agreed on the factors present in each case, each Member expressed his or her view on the appropriate result. To channel our decisions, we agreed to increase or decrease the base-line by three-month intervals. If the aggravating and mitigating factors were of equal weight, we would leave the base-line standing. If the weight came down more on one side, the base-line would be changed by an increment of those months. Where the factors on one side were very clear-cut, we moved by a double group, or si six months. In unusual cases of aggravation, we would increase the base-line by 9 months. By general agreement, the Board decided that a maximum period could be recommended if that was the alternative to a no-clemency decision. Of course, in particularly deserving cases the base-line could be reduced to zero and immediate clemency recommended.

The judgment process was, of course, different for each of us. Because of the different weight we accorded to various factors and combinations of factors. This was not only unavoidable, but desirable. The President had deliberately decided to appoint an advisory committee composed of members with differing experiences and viewpoints, rather than the alternative of organizing the task to a single individual, such as the Pardon Attorney in the Justice Department. We clearly wanted this phase of his program administered in a

unique way. We expected the give and take that was inevitable in a body impossed of pressures with strong and differing values. Dissenting members asked to have their disagreement noted formally for the record in very few instances.

On only a few occasions was a case referred to the President with the division of the Board noted.

The factors we considered fall into 4 major categories. First, we examined the reason for the offense, which could involve for example, the presence or absence of conscientious feelings, an improper or questionable denial of draft exemption; on the part of an applicant, or a lack of mental or physical or education capacity to appreciate his obligations; or combat stress or personal problems which contributed to the offense.

Second, we examined the circumstances surrounding the offense: For example whether he used force in the commission of his offense, and, for military cases, whether he had previous absences or a particularly long period of AWOL.

Third, we examined the individual's overall record. For military cases, we looked to see if he had served in Vietnam, whether he had volunteered, whether he had decorations or an unusually good record before the offense, whether he had been wounded or disabled, how long he had served creditably, or if he had other bad marks in his record, and whether the absence had occurred in the war-zone or after orders to go to Vietnam.

For civilian cases, we looked to see if he had violated probation or parole, whether or not he had completed alternative service, and whether the outside record showed service in the public interest or, conversely, other felony convictions.

Finally, we took into account any false statements made by the applicant to the Presidential Clemency Board, and where pertinent, we sometimes considered the individual's physical or psychological ability to perform any period of alternative service.

The following pages discuss each of the factors in turn, explaining why we thought them important, what relative weight we gave each, and what circumstances we applied them to. 4/

Civilian Cases: The wide diversity of situations made it impossible to apply any one stereotype to the civilian applicants, so we found it necessary to examine several criteria in order to get a complete picture of the case. The reason for the offense was our greatest concern, but we also considered certain other circumstances of an applicant's offense. By examining the applicant's service to his community and the circumstances surrounding his applicant, we were able to focus on other considerations which might have made him more or less deserving of clemency. In many cases, an applicant's draft offense was the only discreditable incident in his life.

(1) Reasons for his offense:

Probably the most important question we could ask about an individual was why he committed his offense. On the basis of the applicant's statements

4/ In appendix_____, we have reprinted the memo distributed to Board members and staff which lists the various factors, and gives illustrations of the different fact situations which qualified under each factor.

and official records we considered whether or not his motivation for committing his draft offense was conscientious or selfish.

We were predisposed to be clement in cases where there was evidence that applicant acted for conscientious reasons or had been denied conscientious objector status (or any other classification) on narrow or improper grounds. We reasoned that had the applicant been granted his deferment or examption, he would not have been convicted of a draft offense in the first place. In about one-fifty of our cases, such a denial was clearly one of the reasons for an applicant's offense.

We also realized that a civilian applicant's offense might have been explained by lack of education or capacity to understand his obligations and available remedies, by personal or family problems, or by some mental or physical condition. Such an explanation applied more ofter to our lower-income, less articulate applicants.

When we did not find a reasonable justification for the offense, we tried to discern whether the applicant committed his offense for selfish or manipulative reasons. Usually, there was evidence to substantiate this conclusion. Where there was not, we looked at the inferences which could be drawn feom the case, although we never gave such an inference the same weight as direct evidence.

Brief descriptions of the individual aggravating and mitigating circumstances which were considered as reasons for the offense are offered below:

Evidence that Applicant Acted for Conscientious Reasons: (Mitigating Factor #10) A great many of our civilian applicants committed offenses out of sincere ethical or religious beliefs. Most conscientious objectors clearly fall into this category.

(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 objections to the war.

We were not concerned whether applicants had previously filed for C.O. status because some applicants did not know they could apply. Others who opposed only the Vietnam War did not bother to file C.O. claims since the courts have determined that a sincere objection to a specific war does not qualify for C.O. status. 5/

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

Several religions such as the Quakers, Brethern, Black Muslims, and Jehovah's Witnesses fell into this category. The Jehovah's Witness cases were particularly distressing to the Board. Members of this religion consider the Selective Service System as part of the military process and do not feel they can act on a Selective Service direction to perform alternative service and still be true to their faith. They do accept alternative service when ordered by the courts. We found it disturbing that persons with sincere and legal C.O. beliefs had to suffer a criminal conviction and sometimes even imprisonment, because the law is imperfect.

The Board found this factor in (%) of its cases. Barring the presence of some especially aggravating factor, such as another serious felony conviction, the Board generally recommended an immediate pardon. It did so because a majority of the Board was of the opinion that this was the classic circumstance which the President had in mind in establishing the program.

Denial of C.O. Status on Grounds Which are Technical, Procedural, Improper, or Subsequently Held Unlawful by the Judiciary: (Mitigating Factor #11)

Some applicants had their C.O. claims denied on grounds which were

5/ Gillette v United States, U.S. ( )

subsequently held unlawful by the Judiciary. Prior to the Welsh case, 6/ a C.O. was required to base his beliefs on religious grounds. In Welsh, the Supreme Court held it was sufficient if the C.O. claim was grounded on sincere ethical and moral beliefs. Although the court decision was not retroactive, we felt it only fair to give credit to an applicant who reveived a conviction simply because he was brought to trial before Welsh. We also looked favorably upon applicants whose C.O. request had been denied on purely technical or procedural grounds.

> (No. 14) Applicant applied for C.O. status after his student deferrment 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 wupport 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.

We found this factor in (%) of our cases. Here, too, it ordinarily resulted in immediate clemency, since we reasoned that had the C.O. status been granted, no offense and thus no conviction would have occurred.

Procedural or Personal Unfairness: (Mitigating Factor #8)

In civilian cases, this circumstance normally applied where an applicant was denied a Selective Service deferment or exemption or the right to apply for one, for reasons which appeared to be arbitrary or unfair. We were careful not to second-guess the local boards, and so did not apply this factor unless it was evident that the deferment or exception would not probably have been granted. Except for the questionable decision by their local board, such applicants would have been deferred or exempted from the draft and hence guilty of no draft offense. The deferment or exemption denied could have been for physical disability, hardship, or any other type of classification.

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(No. 9421) Applicant was denied a hardship deferment solely on the grounds that he had applied after receiving induction orders. Applicant's father had both brain damage and a drinking problem which might have qualified him for a hardship discharge.

In these cases, the Board applied the spirit of the clemency process to discount technical bars to deferment which courts are not free to ignore. Orginally the Board did not distinguish between this factor mitigating factor #10 and - improper denial of C.O. status. In its amended regulations of March 21, 1975, they were separated because the Board found the latter circumstance particularly significant in its determinations.

Mental or Physical Condition: (Mitigating Factor #2)

Generally, persons with serious mental or physical disability received deferments or exceptions, and so they did not often come before us. However, there were cases such as these:

(No. 4493) Applicant refused to report for a physical examination. He claimed he had a disfiguring physical ailment which would subject him to embarressment if he were required to submit

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7/ 40 FR 127663

to an examination before several other persons. Although applicant's attorney maintained that such ailment should qualify as a complete physical exemption, applicant's appeal for change of 1-A status was denied.

Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available Under the Law: (Mitigating Factor No. 1).

In civilian cases, we looked to an applicant's IQ scores and educational level as an indication of his ability to understand his obligations.

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

Evidence of retardation or permanent learning disability created a presumption that applicant had difficulties in coping with his environment. Likewise, we recognized the less severe but still significant problems faced by applicants with low educational levels and cultural and language difficulties. ( )% of our civilian cases presented instances of particularly low mental capacity or educational level, as compared with ( )% in the military cases. Barring the presence of serious aggravating factors, the existence of a strong Mitigating Factor No.1 or Mitigating Factor No. 2 resulted in a substantial reduction of the baseline and very often a recommendation of immediate clemency.

Personal or Family Problems: (Mitigating Factor No. 3)

Many of our civilian applicants had emotional, financial, marital, family, or other personal problems severe enough to have caused them to commit their draft offenses. Such as:

(Case No. 1477) Applicant told the investigating F.B.I. agent that he failed to report because his mother was suffering from arthritis, was unemployable, and dependent upon him for her financial, physical, and emotional well-being.

Evidence That Applicant Committed Offense for Obviously Manipulative and Selfish Reasons: (Aggravating Factor No. 5).

This circumstance was used to indicate that a civilian applicant's reasons for his offense were neither conscientious, justifiable, or excusable. It applied in a wide range of factual situations and reasons, usually ones of personal convenience or whim.

> (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.

Superficially conscientious motives sometimes, upon further investigation, proved to be selfish and manipulative.

> (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.

The Board did not necessarily deny clemency when this factor was present, but it did consider it one of the most serious aggravating circumstances. The Board believed that the President intended to give these individuals a second chance if they showed they were willing to earn their way back. The presence of this factor generally resulted in increasing an applicant's base-line period. The Board found A-5 in ( )% of the civilian cases. In rare civilian cases, where no evidence of reasons for an applicant's offense could be found or inferred, we applied a technical or weak A-5. However, such an inference was only mildly aggravating to an applicant's case.

(2) Circumstances of the Offense

Because civilian offenses consisted basically of a failure to perform a specific act, the only pertinent circumstance of the offense

was whether applicant surrendered to or was apprehended by the authorities before his trial. We did not weigh this factor heavily, and we ignored it altogether if there was no clear evidence about it in the record. It had importance only in marginal cases.

Voluntary Submission to Authorities: (Mitigating Factor No. 11)

If an applicant voluntarily surrendered to authorities before his trial, we interpreted this as an indication of good faith acceptance of the consequences of his act. Since we looked at the applicant's ultimate intentions, it was immaterial whether the applicant was formally arrested.

(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.

Nor was it necessary that the applicant physically present himself at a police station. It was sufficient if the applicant himself notified the authorities of his whereabouts.

(No. 4563) Applicant failed to keep the Draft Board informed of his address from 28 Oct 69 to 8 Mar 71. He informed the Draft Board of his address on 31 May 72 and was arrested 21 Jun 72 without offering resistance.

Apprehension: (Aggravating Factor No. 12)

If the applicant was apprehended by authorities, this created the presumption that the applicant did not intend to cooperate with either Selective Service or the judiciary.

(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.

The circumstances applied, although not as strongly, in cases where the applicant was arrested but did not willfully evade authorities.

(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.

For a period, the Board only considered whether an individual had surrendered. Because some Board members rightly pointed out that it was only proper that we also note apprehension as an aggravating circumstance, this factor was added. The new factor only made explicit a circumstance which the Board had always taken into account, and so no problems of inconsistency were raised. The Board noted this circumstance of the person's apprehension whenever it had information. However, this factor was generally not weighed heavily and it had importance only in marginal cases.[8/]

(3) Other Activities in the Community

We were not exclusively concerned with a reexamination of an applicant's offense. We were also interested in the applicant's conduct in his community prior, during, and after his draft offense. His behavior could indicate the extent to which an applicant had on his own, earned reconciliation with his community. For example, an applicant's previous public service demonstrated his intent to be a contributing member of the community and indicated that his offense did not reflect a total lack of civic responsibility. Conversely, other adult convictions, any prior refusal to fulfill alternative service, or a violation of probation or parole reflected his disregard for the law, the rights of others, and the community in which

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8/ The Board viewed any attendant use of force in the commission of an offense as a serious factor. A review of civilian cases has disclosed no instance in which this factor was found.

he lived. They caused us to question an applicant's willingness to fulfill his obligations as a citizen and, hence, his good faith in applying to us.

In evaluating an applicant's impact upon his community, we specifically considered the following circumstances:

Employment and Other Activities of Service to the Public: (Mitigating Factor No. 7)

We looked with favor upon any work of benefit to the community, whether performed as alternative service or on a condition of probation. Any work contributed voluntarily was particularly appealing.

> (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.

We included any public service performed before or after an applicant's draft offense.

> (no. 583) Applicant has spent the bulk of his time, in and out of school, teaching handicapped and impoverished children.

Other Adult Convictions (Aggravating Factor No. 1)

If a civilian applicant had committed any non-draft-related offense for which he received a felony conviction, we questioned his basic worthiness to be awarded clemency by the President. Whether it occurred before or after his draft offense, other criminal behavior by the applicant hardly seemed consistent with his desire to earn clemency. Only a small percentage of our civilian applicants had been convicted of felonies involving violence (rape, armed robbery, and assault).

(Case No. 2407) In addition to his draft offense, this civilian applicant had three other felony convictions: sale of drugs; possession of stolen property, assault, abduction, and rape.

These cases normally resulted in a no clemency disposition absent any strong mitigating factors. Others had committed less serious offenses, and we were prepared to consider granting clemency in their cases.

(Case No. 1286) This civilian applicant was arrested for possession of barbiturates, after which he jumped bond and assumed his wife's maiden name. He was subsequently arrested for his draft offense, extradited, and convicted on the charge of possessing barbiturates.

Arrests, trials ending in acquittal, misdemeanors, juvenile convictions, or convictions later set aside were not considered by the Board and we directed the staff not to bring this kind of information to our attention.

The problem of how to handle cases in which the civilian applicant had committed another serious offense was perhaps the most controversial issue we faced. At the outset, there were two diametrically opposed views in the Board. One Board member in particular argued that the President's program was designed to offer clemency with regard to draft offenses only. He believed that the Board should disregard any offenses, no matter how serious, committed after the offense which qualified the applicant for the program.

Two Board members took the position that any unrelated felony conviction should result in denying clemency in all but the most unusual circumstances. They believed that the commission of

another offense was sufficient evidence to show that the individual was unworthy of a Presidential pardon.

The Board recognized that the President had given us a very broad mandate. Under the terms of the Proclamation and Executive Order, it was free to reach any reasonable conclusion in this issue. Although either of these two positions was a reasonable interpretation of the President's intentions, the Board decided it would take an intermediate position and would weigh each case on its own merits in accordance with the President's desire for a case-by-case determination. As a general matter, the Board viewed felonies involving personal violence as sufficient reason to deny clemency. Felonies involving property were weighed together with the presence of strong mitigating factors. Unless the Board had strong reason to doubt the guilt of an applicant -- and this happened only rarely -- the presence of this factor invariably resulted at least in a substantial increase in the amount of alternative service. Because of the seriousness of its decision, the Board brought the question to the special attention of the President. It made clear that some members believed clemency was never appropriate in these cases, and that the Board was acting by a divided vote. In a number of instances, the decision to grant or deny clemency was by a one or two vote margin.

Of all no clemency cases ( )% had this factor present. And where the factor was present, the average recommendation was _____ months. However, this factor appeared much more often in military cases. Only ( )% of the civilian cases had Aggravating Factor No. 1.

Prior Refusal to Fulfill Alternative Service: (Aggravating Factor No. 6)

To earn clemency, we usually asked our applicants to perform alternative service. Therefore, we were skeptical about the good faith

of applicants who had not fulfilled an earlier promise to perform alternative service as a condition of CO status. We interpreted this as evidence that an applicant might not be sincere in his intention to satisfy his obligations to the Nation. We found this factor in ( )% of our civilian cases.

(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 for failure to report for alternative service.

Occasionally, applicants failed to perform court-ordered alternative service imposed as a condition of probation or parole.

(No. 560) Applicant was ordered to report for induction. He failed to submit and was sentenced to five years probation, two 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.

We did look differently at Quakers, Black Muslims, or Jehovah's Witnesses who refused on religious grounds to fulfill alternative service ordered by Selective Service, although they were willing to accept judicially-imposed alternative service. We did not wish to penalize them for their conscientious beliefs. We ignored their failure to perform alternative service at the direction of Selective Service, or refused on other than religious or conscientious grounds:

(No. 779) Applicant was classified 1-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.

Violation of Probation or Parole: (Aggravating Factor No. 7)

Similarly, we questioned an applicant's good faith in applying to us for clemency when he earlier had not cooperated with the judicial system

when it was trying to be clement with him. However, we were only concerned about any violation of probation or parole serious enough to result in revocation.

(No. 1023) Applicant was convicted of failure to report for induction and sentenced to five years probation. While on probation, he was arrested and pled guilty to state felony charges. His federal probation was revoked following his state conviction.

(4) Circumstances Surrounding the Application

Finally, we were concerned whether a civilian applicant had the ability to find and hold alternative service employment. If his present personal or family problems or his mental or physical condition would have impaired his ability to perform alternative service, we saw no purpose in imposing such an extra burden on him.[9/] The one exception to this general rule pertained to applicant's presently incarcerated for other offenses, who were expected to perform alternative service upon their release from confinement.

While we did not have any specific mitigating factor on this point, we did apply several factors in this context. For example, we applied the mental or physical condition factor in the following case:

(No. 74) Applicant states that he started drinking when he was 11 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.

9/ Two of DOJ's mitigating circumstances were closely related to this problem: DOJ (2) "Whether the applicant's immediate family is in desperate need of his personal presence for which no other substitute could be found, and such need was not of his own creation," and DOJ (3), "Whether the applicant lacked sufficient mental capacity to appreciate the gravity of his action."

False Statement by Applicant to the Board (Aggravating Factor # 2)

We were also concerned about any false statements which an applicant made to our Board, since this was a clear indication of his unwillingness to cooperate with us in a spirit of openness and honesty.

We looked only for a willful misrepresentation of a material fact. We were not concerned about an applicant's false statements to draft boards or courts, unless he repeated them to us. We specifically warned applicants about this and in our application materials, we printed in capital letters: "ANY FALSE STATEMENT TO THE BOARD WILL BE CONSIDERED AN AGGRAVATING FACTOR HIGHLY UNFAVORABLE TO YOUR CASE."

Because the Board did not require applicants to submit information to us under oath, and we had generally no means of independently weighing information, the Board relied heavily on the good faith of its applicants. We found no instance of this occurring prior to our deciding the case. In one instance, after the President had granted an immediate pardon, we were apprised of evidence which indicated the applicant may have deliberately lied to us. The case was referred to the DOJ for appropriate action. Because the pardon had been accepted, and therefore was an accomplished fact, the Board did not have the legal power to reverse its recommendation.

Military cases: Military applicants presented several issues we did not confront in civilian cases. First, there was a much greater range of reason why military applicants went AWOL. Second, military offenses by their very nature involved more factors than civilian offenses which were failures to perform a single act.

For example, military applicants could have committed one offense or many. They could have deserted under fire, or they might have left to get medical attention for combat injuries. These and many other factors were clearly related to an individual's worthiness for clemency.

The biggest difference between civilian and military applicants was that the latter had an obligation arising from taking his military oath. This was a double-edged sword. On the one hand, they had assumed a serious obligation of national service; on the other hand they had not, to their credit, initially rejected their obligations. Therefore, in addition to this criteria we considered in civilian cases, we examined very closely the applicant's service to the military.

(1) Reasons for the Offense

There were many reasons why soldiers, sailors, airmen, and marines went AWOL or deserted. Some did, in fact, commit their offense for conscientious reasons or because their request for C.O. status had been denied. A greater number committed their offense either because of military treatment they considered unfair or because of personal or family problems. Occasionally, an applicant's mental or physical condition, or lack of mental ability, underlay his offense. We examined these reasons to determine if an applicant's offense was understandable under the circumstances. We were especially concerned about cases where an offense appeared to be the result of mental stress caused by combat. As with civilians, we looked for selfish reasons for a military applicant's offense if he had no apparent justificable reason for it. We looked with extreme disfavor upon any evidence of cowardice on the part of an applicant who deserted in a combat situation or avoided an overseas assignment.

Evidence that Applicant Acted for Conscientious Reasons:

(Mitigating Factor #10)

We applied this circumstances when a military applicant committed his offense out of sincere opposition to war. We did not require that an applicant have applied for in-service CO status or that he otherwise fit the traditional consicientious objector mold.

(No. 9838) Applicant returned to U.S. from Vietnam with orders to Ft. 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.

(No. 3285) Applicant decided he could not conscientiously remain in the Army, and he 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".

We found considerably fewer instances in military cases where articulate moral reasons explained the offense. This factors was found only in (%) of the military cases, as compared with (%) of civilian cases.

Denial of Conscientious Objector Status on Grounds that Are Technical, Procedural, Improper, or Subsequently Held Unlawful by the Judiciary:

(Mitigating Factor #11)

Like the Selective Service System, the military has procedures for discharging or reassigning men who come to hold conscientious objector beliefs. Sometimes, however, these procedures were misapplied.

(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 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.

If the applicant had been unjustly or unfairly denied C.O. status, we consider this a prima facie reason for the offense. Had the applicant been granted C.O. status, he would not have committed his offense. The factor appeared in (%) and we found it highly persuasive.

Personal or Procedural Unfairness: (Mitigating Factor #8).

Because of the military's 24-hour-a-day influence on its members, there are inescapably more opportunities for personal or procedural unfairness to military applicants than to civilian applicants. Understandably, in a large organization like the military, there are occasions when irregularities occur. The Board was careful in evaluating apparent procedural or personal unfairness because it did not feel it could properly second-guess the actions of military authorities. However, the Board was also conscious that it was exercising a clemency function, and so could give more weight to evidence of procedural unfairness than the military authorities had. The following examples of personal or procedural unfairness contributed to the reasons for an applicant' AWOL or disrespect for military regulations. Of course, we were aware that the legitimate demands of the military could outweigh the applicant's persona

needs if this were the case, we looked with less favor upon an applicant's unwillingness to accept some personal inconvenience. This factor appeard in (%) of the military sample we examined.

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

These cases merited serious consideration by the Board. We found examples of persons with disqualifying low mental capacity or physical or psychological infirmities serious enough to question why they had been accepted. The Board relied heavily on those members who had served in Vietnam in making these judgments. The result was usually a recommendation of immediate clemency

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

(No. 222) 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.

(b) Attempts 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:

(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. Applicants 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.

(c) Improper denial of pay or other benefits:

(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. He was not paid for 45 days. He reported that 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 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 backruptcy.

(d) Failure to receive proper leadership, advice, or assistance:

(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.

In evaluating these circumstances, we looked to those Board members who had been officers in the armed services, and especially to General Walt. Any instance in which we found the offense caused by a failure of military leadership was considered especially extenuating.

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

(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 hopitalized 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.

(f) Racial or ethnic discrimination:

(No. 10125) Applicant's version of his problems is that he could no longer get along in the Marine Corps. Other marines

picked on him because he was Puerto Rican, would not permit him to speak Spanish to other Puerto Ricans, and finally, tried to get him in trouble when he refused to let them push him around.

(g) Instructions by a superior to go home and await orders which never arrived:

On a few occasions, the applicant contended that he never intended to go AWOL, but had been awaiting orders. Most often, these statements could not be corroborated and so were largely discounted, especially since the excuse had probably been evaluated and rejected on the occasion of the man's original discharge. When corroboration was evident, or other circumstances made the claim plausible, the Board gave it considerable weight.

(No. 433) 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.

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

The Board came across many instances in which an applicant had apparently assumed or been led to believe that he would get a General Discharge if he waived his rights, or that his Undesirable Discharge would be converted automatically to a General Discharge after a period of time, usually six months. The number of these instances, especially involving persons with lower IQ's and education, suggests that servicemen do not always understand the consequences of the administrative discharge they are accepting.

(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.

Evidence of Mental stress caused by combat - Mitigating Factor #12

We looked with particular sympathy on the cases of Vietnam veterans whose combat experiences had been so taxing or traumatic that their subsequent absence offenses could be attributed at least partly to those esperiences. Their absence offenses were often simply the consequence of the fulfillment of their military responsibilities--not the avoidance of those responsibilities, as was true for most of our other military applicants. We encountered some striking examples of this "Vietnam Syndrome," with applicants turning to alcohol, drugs, or other erratic behavior to cope with the present or memories of the past. We encountered a number of instances in which servicemen returning from combat were unable to adjust to stateside garrison duty with its emphasis on spit-and-polish. In some cases, combat veterans felt they were being treated like recruits by superiors who had not been to Vietnam. In the absence of seriously aggravating factors,

cases in this category usually received immediate clemency. This factor appeared in (%) of our cases, and led to an immediate pardon (%) of the time. This group comprised the candidates that we considered for the special recommendation of veterans' benefits.

(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 bact 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 finally apprehended by German police.

(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 comples, 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. 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 that subsequent to his discharge he had either been institutionalized or under constant psychiatric supervision.

Mental or Physical Condition. Mitigating Factor #3. Any mental problem or physical disease, injury or disability serious enough to have caused personal hardship or incapacity may well have contributed to an applicant's offenses in the military. Alcoholism and drug addiction were included in this factor because they created problems beyond an applicant's control which occasionally contributed to

his offense. These cases were not treated appreciably different from their civilian counterparts. We found this factor in (%) of our military cases.

(No. 194) While applicant had been on leave, he was hospitalized for treatment of infectious hepatitis had been made by a civilian doctor, the doctor had told him that "his resistance was low and that he would not 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.

The physical or mental problems could have been related to the quality of medical treatment received by the applicant while in the military.

(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.

Lack of Education or Ability to Understand Obligation or Remedies Available Under Law - Mitigating Factor #1. In some cases, the applicants' intellignece was an actual cause of his offense.

(No. 14813) Applicant's has a category IV AFQT score. Applicant went AWOL because he was apparently unaware of or did not understand the Army drug abuse program. The corrections officer at the civilian prison where he is incarcerated believes that applicant's retardation, while borderline, makes it impossible for him to obey rules and regulations.

In most cases, it was not necessarily a cause of an applicant's offense, but it did raise some doubt about his ability to understand his obligations.

(No. 216) Applicant completed the 10th grade and quit school because he lost interest. His GT score ensures 68 and his AFQT score is 12 (Category IV).

The Board was particularly concerned about the inordinate number of AFQT, IV cases - those of marginal acceptability for service. While some persons in this group evidently could function in military life, many were unable to shoulder their responsibilities. While not always totally extenuating, the presence of this factor served to reduce the period of alternative service considerably. The factor was found in (%) of our military cases.

Personal or Family Problems: Mitigating Factor #2. This is traditionally the most common reason for military absence offenses. Rightly or wrongly, many soldiers have been placing their families above the military from time immemorial. Reluctantly but realistically recognizing this, we looked for significant emotional, psychological, financial, marital, or other personal difficulties faced by the applicant or his immediate family which could reasonably explain his offense. While the family problems always incurred our sympathy, we were mindful of the hundreds of thousands of other men who had left their homes and loved ones and who did not forget their duty. We were also mindful of our responsibility not to undermine future military discipline by appearing to excuse unauthorized absences. While the factor was given weight, only in extraordinary circumstances did we feel family or personal problems were of such a nature as to completely excuse the requirement for some alternative service. This factor appeared in (%) of the military cases.

(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.

We used a broad definition of "immediate" family.

(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.

and

(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 order 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 attemted 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.

Evidence that Applicant Committed the Offense for Obviously Manipulative and Selfish Reasons - Aggravating Factor #5. Many applicants left the military for unjustifiable, selfish reasons. They, in particular, had not looked upon their military obligation with the seriousness it deserved. Naturally, the presure of this factor was weighed heavily against an applicant. We found it in (%) of our cases.

(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. 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. 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 no-pay status with the Marine Corps.

(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.

Voluntary Submission to Authorities: Mitigating Factor #11. We looked at only the last qualifying offense to determine the applicant's final attitude towards cooperation with military authorities. This factor appeared in (%) of our military cases.

(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.

As the focus was on the applicant's intent we did not require that applicant physically turn himself in. It was sufficient if the applicant himself informed the authorities, whether civilian or military, of his whereabouts.

Apprehension by Authorities: Agravating Factor #12. As with voluntary surrender, we only examined the last qualifying offense. It was not

necessary that the applicant be apprehended specifically for AWOL. If evidence showed that he did not willfully evade authorities, this factor carried little weight. In the absence of any evidence at all, the Board was not obligated to mark either voluntary surrender or apprehension. We marked it in (%) of our military cases.

Desertion During Combat or Leaving the Combat Zone - Aggravating Factor # 4.

When a soldier left his unit in a combat zone, he placed an increased burden on those who remained behind and had to complete the same mission with less men. For this reason, we considered it very serious if the applicant commenced his AWOL from Vietnam.

(No. 7163) Applicant commenced the first of three AWOL's while in Vietnam. He flew back to California.

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

We were particularily harsh when the applicant committed his offense specifically to avoid combat.

(No. 3304) Applicant felt the CO of his company was incompetent, so he would not go into the field with his unit. He was getting nervous about going out on an operation, as there was a good likelihood of enemy contact. Because he said he possessed no confidence in the new CO of his company, he asked to remain in the rear but was denied. Consequently, he left the company area, because, in the words of his Chaplain, the threat of death caused him to exercise his right to self-preservation. His company was subsequently dropped onto a hill while applicant deserted and on that same hill engaged the enemy in combat. He was apprehended on or about 1400 on 5 Aug 68 while travelling on a truck away from his unit without any of his combat gear.

We found this factor in (%) of the military cases and (%) of the cases with this factor were not recommended for clemency.

Failure to Report for Overseas Assignment - Aggravating Factor # 10.

Servicemen ordered to report to Vietnam assumed an extra obligation of military service. For every man who failed to go to combat when ordered, another had to go in his place. Occasionally, an applicant had clearly conscientious reasons for failing to report to Vietnam. In cases like this, we had to balance his

conscientiousness with the inescapable fact that another soldier had to be assigned to Vietnam to replace him.

(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.

We were similarly concerned about servicemen who shirked combat obligations by failing to return while on leave or R&R outside of Vietnam.

(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.

Even when an applicant was merely avoiding overseas service in a non-combat area, he still was avoiding what for many servicemen was an unpleasant duty, far away from family and friends. We were less concerned about this type of failure to report, however.

(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.

We veiwed this factor as a particularily serious element in the (%) of the cases in which it appeared.

Sometimes an applicant went AWOL for apparently understandable reasons, but remained away after his problems had been resolved. While this might have reflected fear of punishment or simple inertia, we believed that a serviceman who recognized his military duty would return as soon as the need for his absence had ended.

(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 returned to military control.

Occasionally, an applicant's subsequent actions contradicted or detracted from his expressed motives.

(No. 206) According to testimony the applicant met his wife, a Danish citizen, shortly after arriving in Germany. She became pregnant and he attemted 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 pre-trial 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.

We sometimes inferred selfish motives either because applicant stated that he had no reason for his offense or because there was no clear evidence to substantiate a reason which warranted further explanation.

(No. 161) On 18 Sep 69 applicant went AWOL for 4½ years. He stated that he did not have any concrete reason for going AWOL.

(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.

Where no evidence at all was available, to explain the offense, we joined a weak, or "technical" factor. However, we considered such an inference to be only mildly aggravating to an applicant's case.

(2) Circumstances of the Offense. Military absentees committed an array of military offenses. They went AWOL for different lengths of time, from diverse locations, and under a variety of conditions. If the applicant committed several AWOL's or was gone for a long period of time, this was naturally more serious than a single time, short-term AWOL. Voluntary surrender indicated cooperation while apprehension did not. If the applicant used force collateral with his AWOL, he showed that he was willing to risk injury to others in order to achieve his own ends. Applicants who left the combat zone or failed to report for overseas assignment showed their lack of concern for others who depended on their presence.

Use of Force by Applicant Collaterally to AWOL, Desertion or Missing Movement: Aggravating Factor #4. Of course, we could not condone any violence by which an applicant effected an escape. This factor appeared in (%) of our cases, (%) of which received no clemency.

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

Multiple AWOL offense - Agravating Factor #8. Many military applicants went AWOL more than once, indicating an inability or unwillingness to solve their problems after the first offense and a casual attitude towards his military duty. Interestingly, only (%) of our applicants were AWOL only once.

(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 AWOL's (1; 1; 10 days), and one NJP for two AWOL's (7; 1 day). He then received a SPCM for two AWOL's (2 months 17 days; 3 months 19 days). He accepted an undesirable discharge in lieu of court martial for one period of desertion (2 years; 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 month 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 1 non-qualifying AWOL (total of 5 years).

AWOL of Extended Length - Aggravating Factor #9. The amount of time that an applicant remained absent reflected on the seriousness with which he viewed his obligations and on his desire to cooperate with military authorities. We looked at the combined length of all AWOL offenses for which he was seeking clemency. We noted the length of time absent in each case for our information, and as a means of comparision with the length of creditable time the individual had served. We gave no weight to this factor if the absence was 6 months long, only slight weight between 6 - 12 months, and full weight for over a year. Our sample disclosed that (%) had short absences, (%) moderate length AWOLs, and (%) absences over one year.

(3) Character of Military Experience

Normally, the military applicant had satisfactorily fulfilled a portion of his obligation prior to his offenses and discharge. Therefore, we balanced, the other favorable and unfavorable aspects of his military experience. Some of the factors we considered here particularly affected our decision whether to recommend an applicant for veterans benefits.

Tours of Service in the War Zone - Mitigating Factor # 7. A startling percentage -- 27% -- of our military applicants did in fact serve in the war zone. Many had served their country well.

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

(No. 14514) Applicant served aboard the USS Buchanan from January 1968 to July 1968 off the coast of Vietnam.

We gave an applicant credit for Vietnam service if he served at least 3 months in Vietnam or was on a naval vessel off the coast of Vietnam, unless his tour ended earlier because of his AWOL actions. Four of the DOD mitigating circumstances fell into this context: "Length of satisfactory service completed prior to absence", "Awards and Decorations received","wounds in combat", and "length of service in Sourtheast Asia in hostile fire zone". Each of these represented a contribution to the military and could be used to lessen the period of alternative service.

(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 67 until 8 May 68, he returned to the United States on emergency leave. Applicant stated that he went AWOL because he could not face going back due to the incompetence of his officers and the killing of civilians.

(No. 1817) Applicant served 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.

Volunteering for Combat or Extension of Service while in Combat. Mitigating Factor #13. Some applicants voluntarily accepted the risks that go with combat. This circumstance applied when applicant volunteered for a first or subsequent Vietnam tour, extended his tour in Vietnam, or volunteered for a combat assignment while in Vietnam. This occured in (%) of our cases.

(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

In a few cases applicants had gone AWOL because they were not sent to Vietnam.

Personal Decorations for Valor. Mitigating Factor #15. Many of our applicants served in Vietnam with sufficient merit that they earned decorations. We recognized the following decorations for valor. We also recognized decorations awarded by the Vietnamese, such as the Vietnam Gallantry Cross with Palm. (%) of our applicants had been decorated in combat.

Service Connected Disability - Mitigating Factor #5. Some applicants suffered permanent physical or mental injury resulting from military duty. Some were wounded in combat, and others injured in training. Their sacrifices required that their AWOL offenses be viewed with a special measure of compassion.

(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. 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 ofaright middle finger.

Wounds In Combat - Mitigating Factor #16. We gave credit if an applicant had been wounded in Vietnam, even if his wounds were not disabling. (%) of our military applicants had been wounded.

(No.11013) Applicant served in Vietnam from 26 Mar 67 to 22 Mar 68, as an infantryman and grenadier. On 12 May 67, 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. 9894) Applicant received fragment wounds to his face, right forearm and thumb for an exploding shell while in c 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 to assignments he could perform: no handeling 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.

Extended Period of Creditable Military Service: (Mitigating Factor #6)

Even those who did not go to Vietnam often gave years of good military service to their country. We measured the amount of applicant's military service, minus any time AWOL or in confinement, looking with greater favor upon applicants who had at least one year of creditable service. We did, however, recognize that an applicant who completed over 6 months of creditable service had completed his training, begun his first duty assignment, and tentatively earned eligibility for veterans benefits. Therefore, we did gave him some credit for his service. Of our cases, (%) were discharged with less than 6 months service. (%) had over one year good time.

Above Average Military Conduct and Proficiency or Unit Citations: (Mitigating Factor #4)

We were also concerned about the quality of an applicant's military service. An applicant's conduct and proficiency ratings, excluding those poor ratings which resulted from applicant's AWOL offenses were averaged and compared to the standards his service. However, we only gave credit for conduct and proficiency scores after six months of service, because the initial ratings given in basic training were generally high and did not necessary indicate the quality of an applicant's service. Even if an applicant did not meet these standards, we gave him some credit for serving with a unit which earned a unit citation. Ratings had to be high for the 5th months prior to the AWOL. Absent either above average ratings or unit citations, we still, on occasion, gave credit

to letters of commendation, decorations other than for valor, and other indications that applicant served well during his military service. Of our military cases, (%) had good records before being discharge for AWOL.

Other Adult Convictions: (Aggravating Factor #1)

As was the case in revieving civilian applicants, we were also concerned with criminal convictions in addition to the offense for which clemency was offerred. We also recorded convictions by Special and General court-martials, as well as civilian felony convictions. All told, we marked this faith is (%) of our military cases. —/

Violation of Probation: (Aggravating Factor #7)

Occasionally an applicant's court-martial sentence had been suspended, and his subsequent actions caused the suspension to be vacated. This reflected an applicant's failure to cooperate with military authorities, even when those authorities were attemping to be clement with him.

(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.

Other Offenses Contributing to Discharge: (Aggravating Factor #8)

Some applicants committed a conviction of AWOL and other AWOL offenses which led to an undesirable discharge for unfitness. We rated this as part of the over-all record and gave greater to the factor as the record grew worse.

—/ Persons previously convicted of felonies were not eligible to enter the military, and most military members who were convicted of civilian offenses while in the military were discharged for that conviction rather than for AWOL offenses. Therefore, our military applicants with civilian convictions normally committed their civilian offenses after discharge.

(No. 8334) Applicant received an undesirable discharge for unfitness, with multiple reasons. In an 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 givernment.

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

(4) Experience in the Civilian Cummunity:

As with our civilian cases, we looked to the applicant's activities following his offense of our military cases, (%) had some public service activities (Mitigating Factor # 4).

(5) Circumstance Surrounding the Application:

As with our civilian applicants, we were concerned about the ability of each military applicant to find and hold alternative service employment. While we did not have any specific mitigating factor on this point, we did take this factor into account.

(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 competend during his period of service. After his discharge, the applicant went home to his father who was so concerned about the applicant's mental state that he had the applicant committed to a state mental institution.

(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. 7590) After being discharge, 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.

False Statement by Applicant to the Board (Aggravating Factor #2)

We looked only for a willful misrepresentation of a material fact. We were not concerned about an applicant's false statements to military authorities, unless he repeated them to us. We identified this factor in (%) of our cases, and (%) resulted in no clemency.

(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 indicated one prior court-martial and one Article 15 for AWOL offenses.

Personal or family Problems: (Mitigating Factor # 2).

This is traditionally the most common reason for military absence offenses. Rightly or wrongly, many soldiers have been placing their families above the military from time immemorial. Reluctantly but realistically recognizing this, we looked for significant emotional, psychological, financial, marital, or

other personal difficulties faced by the applicant or his immediate family which could reasonably explain his offense. While the family problems always incurred our sympathy, we were mindful of the hundreds of thousands of other men who had left their homes and loved ones and who did not forget their duty. We were also mindful of our responsibility not to undermine future military discipline by appearing to excuse unauthorized absences. While the factor was given weight, only in extraordinary circumstances did we feel family or personal problems were of such a nature as to completely excuse the requirement for some alternative service. #2 appeared in (%) of the military cases:

> (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.

We used a broad definition of "immediate" family.

> (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.

And

> (No. 3538) Applicant fathered a son to a Vietnamese woman. He later sought permission to marry her, which was denied. Two days later he received ordersto 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 AWOL.

Evidence That Applicant Committed the Offense for Obviously Manipulative and Selfish Reasons: (Aggravating Factor #5)

Many applicants left the military for unjustifiable, selfish reasons. They, in particular, had not looked upon their military obligation with the seriousness it deserved. Naturally, the pressure of this factor heavily weighed against an applicant. We found it in (%) of our cases:

(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. 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. 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 no-pay status with the Marine Corps.

(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.

II

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II. THE PRESIDENT'S CLEMENCY PROGRAM

F. CONDITIONAL, NOT UNCONDITIONAL, CLEMENCY

F. Conditional, Not Unconditional, Clemency

1. Introduction

The President extended his offer of clemency in a spirit of reconciliation. At the same time, he expected those to whom his offer was made to accept it in a spirit of reconcil ation. This meant two things: First, the individual had to step forward and request that he be accepted back into the community; second, he had to indicate his willingness to again accept the responsibilities of a citizen by performing a period of alternative service. This fundamental part of the President's Program most clearly distinguishes it from proposals for unconditional amnesty.

The President believed that an unconditional program would be appropriate for at least three reasons. First it would serve to divide the country further, when the great need was for reconcilation. While no alternative service could match the hardships of the millions who served honorably in Vietnam, much less the sacrifices of those who were wounded or died, the President rightly believed that reconcilation would occur only if those who did not perform their military obligation were required to perform a kind of substitute service.

Second, the President believed that those who failed to serve could have no sound objection to doing the same kind of service as that performed by thousands of conscientious objectors during the Vietnam era. This

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/Certain applicants to the Presidential Clemency Board received a form of immediate clemency even if their pardon was conditioned upon performing Alternative Service. Persons furloughed had their prison sentences commuted when the President signed their clemency warrants. Others with probation, parole, or fines still outstanding also had those portions of their sentences commuted immediately.

service permits a citizen to fulfill his obligation to his country by non-military means if he cannot in good conscience bear arms on its behalf.

Finally, the President's firm desire that individuals be treated on a case-by-case basis, and offered clemency according to the particular circumstances of their case, required that conditions be imposed which could reflect these different decisions. The alternative service condition was peculiarly suited to this because it enabled the Board to adjust the length of service to fit each individual case. The power to pardon, created in Sections 1, 2, and 3 of the Constitution, carries with it the power to condition the pardon upon the performance of certain conditions before or after the grant. In Schick v Reed ( ) the Supreme Court made a thorough study of the Presidential pardon power, concluding:

> .....this Court has long read the Constitution as authorizing the the President to deal with individual cases by granting conditional pardons. The very essence of the pardoning power is to case individually.

In order to treat each individual case fairly and justly, the President chose to exercise his prerogative to grant clemency only after certain conditions had been met.

2. Application.

The President could have directed the Board to review the cases of all those eligible without the requirement of an application. However, since the grant of a pardon must be accepted by the recipient and also could involve performing alternate service, it would have been a useless gesture to review the cases of persons who would have declined the

President's offer anyway. Those individuals who wished to be considered for clemency were thus required to make a specific application for it.

The requirement that individuals affirmatively apply for clemency had one unavoidable consequence: It made it incumbent on the Board that we inform potential applicants of the existence of the program. We are persuaded that substantially all of those eligible for the DOD and DOJ phases learned of their eligibility, but also believe that a substantial number of persons eligible for our portion were not aware of their elibility.—/

The application criteria were liberally construed. To make a timely initial filing, the applicant or a person acting in his behalf had to contact any agency of the Federal government not later than the deadline of March 31, 1975. If this contact was in writing by the applicant himself, or his attorney, it was considered to be a valid application. If the initial filing was made over the telephone or by someone other than his attorney, he had until May 31, 1975 to confirm his request for clemency.

Where the application contained insufficient information for us to obtain the facts necessary for our case-by-case determination, we tried to contact the applicant and obtain these facts. However, we could not consider applications

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—/ This subject is treated in more detail at pages _____ in this report.

for which we were unable to obtain the facts necessary to make our decision.

The application requirements of the other two segments of the Program were more difficult. The Executive Order specified that these applicants had to appear in person to participate. Both the Departments of Justice and Defense required that an individual come to the United States if he was outside of the country, go to a certain place, acknowledge allegiance to the United States,[/] and pledge to perform alternative service. The Department of Justice required that, upon entering the United States, a convicted draft evader had fifteen (15) days in which time to present himself to the United States Attorney in the judicial district in which the draft evasion offense had occurred. This had to occur not later than March 31, 1975. If an unconvicted evader failed to comply with one of these conditions, he was subject to prosecution for his draft evasion offense.

To receive clemency from the Department of Defense's segment of the Program, a nondischarged military absentee had to return to the United States, turn himself in at any military base not later than March 31, 1975, and travel to the Joint Clemency Processing Center in Indiana. When the military

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[/] Because all of our applicants to the Clemency Board had already been punished for their draft evasion or military absence offenses, we did not require a loyalty oath.

absentee took the oath and agreed to perform alternative service, he was given an undesirable discharge. Only after an eligible applicant had complied with the application requirements of his segment of the Program was he allowed to start performing his alternative service period to earn an upgrade to a Clemency Discharge.

3. Alternative Service

Once we determined the disposition of a case, it was referred to the President for his approval and signature. The President did not execute formal grants of clemency in two classes of case--where the individual's conviction was not yet final and appeal rights might result in reversal, and where the individual was presently incarcerated for a subsequent offense. In both cases the President signed a "letter of intent" to offer clemency once the conviction became final or the individual was released from confinement, as the case may be. The obligation to begin service did not begin until the warrant was signed.

Not all of our applicants were asked to perform alternative service. Approximately fifty percent of our applicants were asked to perform three to twelve months at a suitable alternative service job, but, forty-three percent received immediate pardons or clemency discharges, without having to do alternative service.

Those who were required to perform alternative service under any part of the President's program they came under the jurisdiction of the Selective Service System, pursuant to Executive Order 11804. From the date that we mailed the letter to one of our applicants informing him that the President's offer of clemency was contingent upon successful completion of alternative service, he had thirty days in which to enroll with Selective Service, Department of Defense and Department of Justice applicants had 15 days.

All individuals with alternative service to perform were informed by their referring agency that under Selective Service rules they could perform this service in any state in the United States. To enroll they had to go to the place where they wanted to reside and contact the nearest office of Selective Service. There are over 650 such offices throughout the United States. (These offices are supervised by 56 State Directors, located in each of the 50 states plus New York City, the District of Columbia, Puerto Rico, Guam, the Panama Canal Zone, and the Virgin Islands.) Initially he had the opportunity of finding a job of hiw own choosing. If he found a suitable job that he wished to perform, he was required to notify his State Director a minimum of ten days before the end of the thirty day period. This gave the State Director ample time to determine if, in fact, the job met the eligibility criteria.

The following criteria for acceptable alternative service jobs were established by Selective Service:

A. The enrollee must work full-time (i.e., forty (40) hours per week) at a job that promoted the national health, safety or interest,

B. The enrollee must not interfere with the competitive labor market (i.e., he cannot be assigned to a job for which there were more qualified applicants who were not returnees than there were spaces available),

C. The job must be with a non-profit organization (e.g., the government, certain religious organizations, other charitable organizations).

D. Unless he obtains a waiver from his State Selective Service Director, the pay that an enrollee received from his employer must provide him with a standard of living that was at least equivalent to that which he would have enjoyed had he gone into or stayed in the military.

E. The Selective Service sought to find jobs that would utilize any special skills or talents that an enrollee had.

If the enrollee did not find a suitable job, the State Selective Service Director had to have found one for him by the end of the thirty day period.

Because of local economic situations, it has often been difficult for enrollees to find their own jobs, and it has not even always been possible for Selective Service to place every enrollee within the thirty day period. To be fair to the enrollee, Selective Service rules specified that if through no fault of his own the enrollee had not been placed in a job within the thirty day period, creditable time would commence on the thirty-first day following his enrollment.

While this provision is not entirely satisfactory since it permits an individual to "earn" clemency before he has a job, it avoids penalizing individuals who are willing to serve but for whom no job is available.

For many, alternative service jobs have offered the beginning of a new career:

> A former Marine's alternative service has consisted of assisting a jailer. He adapted well to his job, went to school on his own time, and is now a deputy sheriff.
>
> An Army veteran was assigned as a rodent and insect control inspector for the city's health department. His supervisor is so pleased with his work that he hopes to retain him after his alternative service is over.

So far, almost 70 people have completed their periods of alternative service under the President's program. As the table below indicates, the Department of Defense segment of the program has the highest number of applicants in this category. Others have begun their jobs, but -- unfortunately -- many others have not.

Information on Reconcilation Service Program

August 11, 1975)

Status	Military	Department of Justice	Clemency Board	Totals	Cummulativ Totals
Enrolled	4508	723	101	5332	-
Completed A/S	52	9	7	68	68
At Work	1353	459	19	1831	1899
Referred to Job(s)	909	170	12	1091	2990
Job Interruptions	145	29	2	176	3166
Postponed	63	21	2	86	3252
New Enrollees		15	57	72	3324
Terminated	1986	20	2	2008	5332

The success of the Department of Justice in having its applicants do alternative service reflects the threat of prosecution facing those terminated from the program. Many Department of Defense applicants may have applied for clemency just to end their fugitive status and receive an Undesirable Discharge. This may explain the large number of Defense applicants who either never enrolled with Selective Service or later terminated for failing to accept the designated employment.

The failure of many of our applicants to enroll with Selective Service or to begin alternative service work may be the result

of two factors. Many of our clemency recipients may not understand some basic facts about their alternative service obligation. Unlike the other two agencies with clemency programs, we were unable to counsel our applicants in person. Likewise, our shorter alternative service assignments of three to six months may make it harder for our applicants to find jobs.

III