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Summary 001 executive summary

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1. Introduction

In the years before President Ford assumed office, public opinion was sharply divided over what the government policy should be toward those who had committed Vietnam-era draft violations and military absence offenses. Many believed that these actions could not be forgiven in light of the sacrifices endured by others during the war. Yet, many citizens believed that only unconditional amnesty was appropriate for offenders who had acted in good conscience to oppose a war they believed wrong and wasteful.

Something had to be done to bring Americans together again. The rancor that had divided the country during the Vietnam War still sapped its spirit and strength. The national interest required that Americans put aside their strong personal feelings. Six weeks after taking office, President Ford announced a program of clemency, offering forgiveness and reconciliation to Vietnam-era draft and military absence offenders.

2. The President's Clemency Program

In his Proclamation of September 16, 1974, President Ford created a program of conditional clemency for roughly 13,000 civilians and 100,000 servicemen who had committed draft or military absence offenses between the adoption of the Gulf of Tonkin Resolution (August 4, 1964) and the day the last American combatant left Vietnam (March 28, 1973). He authorized the Departments of Justice and Defense, respectively, to review applications from the 4,522 draft offenders and the 10,115 undischarged servicemen still at large. He created the Presidential Clemency Board to consider applications from the 8,700 convicted and punished draft offenders and the estimated 90,000 servicemen given bad discharges for absence offenses. He gave all eligible persons 4-1/2 months (later extended to 6-1/2 months) to apply. He promised that their cases would be reviewed individually. He further indicated that applicants would be asked to earn clemency where appropriate, by performing up to 24 months of alternative service in the national interest, under the supervision of the Selective Service System.

Under the Justice Department program, unconvicted draft offenders would have their prosecutions dropped, enabling them to avoid imprisonment and the stigma of a felony conviction. Under the Defense Department program, fugitive servicemen were offered an immediate Undesirable Discharge as a permanent end to their fugitive status, similarly enabling them to avoid imprisonment and the stigma of a Bad Conduct or Dishonorable Discharge. They were also offered the chance to earn a Clemency Discharge. Under the Clemency Board program, convicted draft offenders were offered full and unconditional Presidential pardons for their draft offenses. Former servicemen who had received bad discharges were offered clemency discharges and full Presidential pardons for their absence offenses.

By granting pardons to convicted or discharged offenders, President Ford was exercising the most potent constitutional form of executive clemency available to him. The Presidential pardon connotes official forgiveness for designated draft or military offenses, restoring all Federal civil rights lost as a result of those specific offenses. Likewise, a full and unconditional pardon indicates that government agencies should disregard all pardoned offenses in any subsequent actions they take involving clemeny recipients.

By directing that the military services upgrade bad discharges, substituting Clemency Discharges in their place, the President was indicating to employers and creditors that they should not discriminate against individuals who had received clemency. As a "neutral" discharge, the Clemency Discharge appears to be working: A recent survey of large national employers and local (Pennsylvania) employers found that they view it as almost identical to a General Discharge under honorable conditions and much better than an Undesirable Discharge under other-than-honorable conditions.

A Clemency Discharge does not confer veterans' benefits, but it leaves an individual with the same appeal rights that were available to him before. Indeed, the receipt of a Presidential pardon and a Clemency Discharge should improve an individual's chances for further upgrade.

Altogether, 21,729 eligible persons applied for clemency.

TABLE 1: PERSONS ELIGIBLE FOR THE PRESIDENT'S CLEMENCY PROGRAM

Agency	Applicants	Number Eligible	Number Applying	Percent Applying
Defense	Fugitive AWOL offenders	10,115	5,555	55%
Justice	Unconvicted draft offenders	4,522	706	16%
P.C.B.	Discharged AWOL offenders	90,000	13,589	15%
P.C.B.	Convicted draft offenders	8,700	1,879	22%
TOTAL		113,337	21,729	19%

Through the first the Clemency Boardek in January, we had received only 850 applications, with the initial January 31 deadline just a few weeks away. At that time, the public did not realize that the program included not only fugitives but also punished offenders--including servicemen who had served in Vietnam. Very few people realized that the President's program included the following sort of individual:

(Case 1) While a medic in Vietnam, this military applicant (an American Indian) received the Bronze Star for Heroism because of his actions during a night sweep operation. When his platoon came under intense enemy fire, he moved through a minefield under a hail of fire to aid his wounded comrades. While in Vietnam, he was made Squad Leader of nine men, seven of whom (including himself) were wounded in action. After returning to the United States, he experienced post-combat psychiatric problems. He went AWOL several times to seek psychiatric treatment. He received a bad discharge for his absences.

Because of this widespread public misunderstanding, we began public service announcements on thousands of radio and television stations, held meetings and press conferences at over two dozen cities, met with thousands of veterans' counselors throughout the country, and circulated bulletins to agencies in direct contact with eligible persons--such as Veterans' Administration offices, employment offices, post offices, and prisons. Given a limited budget of $24,000, the results were dramatic. During the rest of January, we received over 4,000 new applications. Because of this response, the President extended the application deadline another month. We received 6,000 in February and, after a final extension, another 10,000 before the March 31st final deadline--for a total of about 21,500, of whom 15,468 turned out to be eligible. This increase in applications was directly attributable to our public information campaign.

By asking applicants when they learned they were eligible, we discovered that over 95% did not realize they could apply until after the January 8 start of the campaign; 90% applied within days or even hours of their discovery they were eligible. The Departments of Defense and Justice did not experience a similar increase in applications, because it was already widely understood that fugitive draft and military absence (AWOL) offenders could apply for clemency.

Despite our information efforts, public understanding of the program has not changed appreciably. An August, 1975 Gallup Poll found that only 15% of the American people understood that convicted draft offenders and discharged AWOL offenders could also apply for clemency. Virtually the same percentage--16%--of eligible persons in those categories actually did apply. We are convinced that most of the remainder still do not know that they were eligible for the program. Others may not have applied because their lives are settled, with their draft offense convictions or bad discharges of no present consequence to them. We believe that very few failed to apply to the Clemency Board because of their opposition to our program.

The press and the public were, and indeed still are, preoccupied with anti-war fugitives who fled to Canada. However, we found that only 6% of our civilian applicants and 2% of our military applicants had ever gone to Canada. Virtually all of them subsequently returned to the United States long before they applied for clemency. Of the 15,468 Clemency Board applicants, less than 400 (3%) ever went to Canada. This stands in marked contrast to the 3,700 (24%) who were Vietnam veterans. In recent years, many estimates have been made of the number of fugitive draft and AWOL offenders in Canada, usually on the basis of very limited data. Based on our own data and our understanding of applicants to the Justice and Defense programs, we estimate that a maximum of 7,000 persons eligible for clemency were ever Canadian exiles. We further estimate that only 4,000 (less than 5%) of the 91,500 who were eligible but did not apply for clemency are still in Canada, contrary to the usual public impression.

What happens next to those who did not apply? The 8,300 who are still fugitives should surrender to authorities. While they will probably receive a bad discharge or felony conviction, they will end their fugitive status. The 90,000 who have already been punished can apply to the Pardon Attorney in the Department of Justice or to the appropriate military discharge review boards, avenues of relief which are not related to the President's clemency program and are not affected by the program's end.

3. Applicants to the Presidential Clemency Board

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Conscription is selective. Only 9% of all draft-age men

served in Vietnam. Less than 2% ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred--were convicted or remained charged with these offenses at the start of the clemency program.

Many Clemency Board applicants fell into common categories: The civilian war resister who had his application for conscientious objector (CO) status denied and who stood trial rather than leave the country; the Jehovah's Witness who, although granted a CO exemption and went to jail because his religious convictions prohibited him from accepting an alternative service assignment from Selective Service; the Vietnam veteran who went AWOL because of his difficulties in adjusting to post-combat garrison duty; the serviceman with a low aptitude score who could not adjust to military life; the serviceman who went AWOL to find a better-paying job to get his family off welfare.

The civilian applicants were not unlike most young men of their age. They grew up in stable middle-class families. Eleven percent were black, and 1.3% were Spanish-speaking. Over three-quarters graduated from high school, and their average IQ was 111. Roughly one in four was a Jehovah's Witness or member of another religious sect opposed to war. Almost half applied for conscientious objector exemptions, which were usually denied. The typical draft offense was failure to report for or submit to induction. Three-quarters committed their offense because of their opposition to war in general or the Vietnam War in particular. For 96%, it was their only felony offense, committed at an average age of 21.

Most civilian applicants surrendered immediately, and most who were ever fugitives lived openly at home. Only 6% ever sought exile in Canada. After indictment, most pled guilty. Two-thirds were sentenced to probation, usually on the condition that they perform alternative service. The other one-third went to prison, usually for periods of less than one year. Less than 1% served prison terms of two years or longer, but some were in prison for as long as five years.

At the time of their applications for clemency, almost all were either working full-time or in school. Only 2% were unemployed, with another 2% in prison for unrelated felony offenses. Approximately 100 were still imprisoned for their draft offenses when the President announced his clemency program. They were released upon the condition that they apply for clemency.

Unlike the civilian applicants, the vast majority of our military applicants were not articulate, well-educated, or motivated explicitly by opposition to the war. Almost none had applied for a conscientious objector exemption before entering the service, and less than 5% committed their AWOL offenses because of opposition to the war. Most grew up in broken homes, with parents struggling to cope with a low income. Roughly one in five were black, and 3.5% were Spanish-speaking. Despite an average IQ of 98, over three-quarters dropped out of high school before entering military service at the age of 17 or 18. Almost one in

three were tested at below the 30th percentile of intelligence (Category IV on the Armed Forces Qualifying Test), making them only marginally qualified for military service.

Most military applicants enlisted rather than be drafted, usually joining the Army or the Marines. Slightly over one-third were ordered to Vietnam. Seven percent failed to report. The other 27% did serve in Vietnam and half either volunteered for a Vietnam assignment, volunteered for a combat mission, or re-enlisted while in Vietnam. Very few went AWOL in Vietnam; only four percent of all applicants went AWOL from an apparent combat situation. However, almost one in four suffered from mental stress caused by combat, and two in five have experienced severe personal problems as a result of their Vietnam tour. Two percent all military applicants returned from Vietnam with disabling injuries.

AWOL offenses usually occurred after training and in stateside bases. Over half committed their offenses because of serious personal or family problems. Other common reasons for AWOL offenses included resentment of some action by a superior or a general dislike of military service. Typically, they went AWOL two or three times. Most returned to their home towns, where they lived openly. Only 2% of the military applicants ever sought exile in Canada. Almost half surrendered voluntarily after their last AWOL offense. At the time of their last AWOL, they were typically 20 or 21 years old and had accumulated 14 months of creditable service.

Upon their return to military control, about 15% were given administrative Undesirable Discharges for Unfitness. The other 85% faced court-martial charges, roughly half accepting an Undesirable Discharge in lieu of court-martial. This was a particularly frequent practice among applicants discharged after 1970. The remaining 40% stood general or special court-martial, were convicted, and received Bad Conduct or Dishonorable Discharges. All court-martialed applicants spent at least some time in confinement, with their sentences averaging five months in length. About 170 were still confined when the clemency program started, and they were released upon application.

The bad discharges have seriously affected the current employment status of military applicants. Seventeen percent were unemployed at the time of their clemency applications, whereas only 8% were unemployed during their last AWOL offenses. Another 7% were presently incarcerated for civilian felony offenses. Altogether, 12% had been convicted for at least one civilian felony offense at one point in their lives.

4. Procedural and Substantive Rules

The Clemency Board was the only new entity created by President Ford for the special purpose of reviewing the cases of clemency applicants. Originally, the President named nine members to the Board, designating former U.S. Senator Charles E. Goodell as the Chairman. After the great increase in applications, the President expanded the Board to eighteen members. Both the original Board and the expanded Board were representative of a cross-section of views on the Vietnam War and on the issue of clemency. The Board consisted of 13 veterans of military service, three women, and two priests. The Board included five Vietnam veterans, two of whom were severely disabled in combat. Another member has a husband who still is listed as missing in action. Our policies and case dispositions reflected a synthesis of the different backgrounds and experiences of our members.

The Board worked hard during the spring and summer to fulfill the President's requirement that we give each case individual attention before his September 15 deadline. The consensus was remarkable, given the wide range of views represented on the Board. What we sought to maintain was a reasoned, middle ground. The President's goal of national reconciliation found, expression in the spirit of compromise and accommodation that guided the Board.

To assure the fairness and consistency of our case dispositions, we developed a case-by-case review procedure consistent with the President's goal of clemency. Because this was a program of clemency, not law enforcement, we unanimously decided not to seek the assistance of the FBI in preparing our cases. We limited our file acquisition to the official military or court records. Similarly, we kept case files confidential to protect the rights of applicants and to preserve the spirit of reconciliation. We promised strict confidentiality to all who applied to the Board. For each case, staff attorneys prepared narrative summaries which were carefully checked for accuracy. Each applicant was sent his summary and encouraged to identify errors and to provide additional information. Staff attorneys presented cases in oral hearings before panels consisting of three or four Board members who had read the summaries in advance. The attorneys' supervisors were present as panel counsels to assure staff objectivity. They also served as legal advisors to ensure that Board policy precedents were applied correctly. Every Board member had the right to refer any case to the full Board. This right was exercised in only about 700 (5%) of our cases. The Chairman referred some cases to the full Board with the assistance of a computer-aided review which flagged case dispositions for being either too harsh or too lenient.

Case dispositions varied little from week to week, especially after our basic policy decisions had been made. During our first six months, we decided 500 cases, recommending outright pardons (without alternative service) to 46% of all cases, denial of clemency to 3%, and alternative service to the remainder. During our latter six

months, we decided 14,514 cases, recommending outright pardons to 44%, denial of clemency to 6%, and alternative service to the remainder.

Contributing to the fairness and consistency of our process were the clear rules we established and published for deciding cases. Our alternative service "baseline" formula took account of the fact that all of our applicants had been punished for their offenses. We started with 24 months, deducting three months for every one month spent in confinement, and deducting one month for every month spent in satisfactory performance of court-ordered alternative service. In cases where military officials and Federal judges had adjudged short sentences, we reduced the baseline figure to match the sentence actually given. Our minimum baseline was three months, and almost 98% of our applicants had baselines of six months or less.

To determine whether an applicant deserved clemency--and, if so, whether his assigned period of alternative service should be different from his working baseline--we applied 28 specific aggravating and mitigating factors. As with our baseline formula, we developed our list of factors by consensus. We were especially concerned about the reasons for an applicant's offense and the circumstances that had prompted it. Likewise, we considered his overall record as a serviceman and as a member of his community. Almost all of our designated factors were established very early. Only two totally new aggravating factors were established by the expanded Board, although all factors were continually clarified as new fact situations arose. Each factor was codified, with illustrative case precedents, through publication of five issues of an in-house policy and precedent journal called the Clemency Law Reporter.

Our final list of aggravating factors consisted of the following:

1. Other adult convictions;
2. False statement to the board;
3. Use of physical force in comming offense;
4. AWOL in Vietnam;
5. Selfish motivation for offense;
6. Failure to do alternative service;
7. Violation of probation or parole;
8. Multiple AWOL offenses;
9. Extended AWOL offenses;
10. Missed overseas movement;
11. Non-AWOL offenses contributing to discharge for unfitness; and
12. Apprehension by authorities.

Our final list of mitigating factors consisted of the following:

1. Inability to understand obligations or remedies;
2. Personal or family problems;
3. Mental or physical condition;
4. Public service employment;
5. Service-connected disability;
6. Extended creditable military service;
7. Vietnam service;
8. Procedural unfairness;
9. Questionable denial of conscientious objector status;
10. Conscientious motivation for offense;
11. Voluntary submission to authorities;
12. Mental stress from combat;
13. Combat volunteer;
14. Above average military performaning ratings;
15. Decorations for Valor; and
16. Wounds in Combat.

5. Case Dispositions

We did not apply each factor with equal weight. For example, conscientious motivation or serious personal or family problems often led to outright pardon recommendations. The following two cases are typical:

(Case 2) This civilian applicant had participated in anti-war demonstrations before refusing induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner."

(Case 3) This military applicant's wife was pregnant, in financial difficulties, and faced with eviction; she suffered from an emotional disorder and nervous problems; his oldest child was asthmatic and an epileptic, having seizures that sometimes resulted in unconsciousness. Applicant requested transfer and a hardship discharge, both of which were denied.

Creditable Vietnam service was also a highly mitigating factor, usually resulting in an outright pardon. In particularly meritorious cases, we recommended to the President that he direct the military to upgrade the applicant's discharge to one under honorable conditions, with full entitlement to veterans' benefits. We were particularly concerned about the eligibility of wounded or

disabled veterans for medical benefits. We made upgrade recommendations in ~~the following two cases~~, ~~among those~~ (ABOUT EIGHTY CASES, OF WHICH THE FOLLOWING TWO ARE TYPICAL:

(Case 4) This applicant did not go AWOL until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the U.S. was wrong in getting involved in the war and that he "was wrong in killing people in Vietnam." He had over three years' creditable service, with 14 excellent conduct and efficiency ratings. He re-enlisted to serve his second tour within three months of ending his first. He served as an infantry man in Vietnam, was wounded, and received the Bronze Star for Valor.

THERE WAS UNANIMOUS AGREEMENT BY THE BOARD THAT EVERY VETERAN WHO HAD BEEN WOUNDED IN MILITARY SERVICE SHOULD RECEIVE SOME FORM OF MEDICAL BENEFITS, ADDITIONALLY)

(Case 5) During applicant's combat tour in Vietnam, his platoon leader, with whom he shared a brotherly relationship, was killed while awakening applicant to start his guard duty. The platoon leader was mistaken for a Viet Cong and shot by one of his own men. This event was extremely traumatic to applicant, who subsequently experienced nightmares. In an attempt to cope with this experience, applicant turned to the use of heroin. After becoming an addict, he went AWOL. During his AWOL, he overcame his drug addiction only to become an alcoholic. After obtaining help and curing his alcoholism, he turned himself in.

On the other hand, some aggravating factors were considered very grave, generally leading to "No Clemency" decisions. There were a few applicants who clearly went AWOL from combat situations.

(Case 6) This military applicant would not go into the field with his unit, because he felt that the new commanding officer of his company was incompetent. He was getting nervous about going out on an operation; there is evidence that everyone believed that there was a good likelihood of enemy contact. He asked to remain in the rear, but his request 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, where it engaged the enemy in combat. Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

We denied clemency in the above case, but other cases of AWOL in Vietnam involved strong mitigating factors.

Often, combat wounds or the psychological effects of combat led to AWOL offenses. For example, we recommended an outright pardon in the following case:

(Case 7) Applicant was assigned to an infantry unit in Vietnam. During his combat service, he sustained an injury which caused his vision to blur in one eye. His vision steadily worsened, and he was referred to an evacuation hospital in DaNang for testing. An eye doctor's assistant told him that the doctor was fully booked and that he would have to report back to his unit and come back to the hospital in a couple of weeks. Frustrated by this rejection and fearful of his inability to function in an infantry unit, applicant went AWOL.

Applicants who had been convicted of felony offenses involving serious bodily harm were generally denied clemency, as in the following case:

(Case 8) This civilian applicant had three other felony convictions in addition to his draft offense. In 1970, he received a one-year sentence for sale of drugs. In 1971, he received one year of imprisonment and two years of probation for possession of stolen property. In 1972, he was convicted of failure to notify his local board of his address. He was sentenced to three years' imprisonment, but his sentence was suspended and he was put on probation. In 1974, he was convicted of assault, abduction, and rape, [redacted] for which he received a 20-year sentence.

Perhaps our most difficult and disputed cases involved applicants who had been convicted of a civilian felony offense other than a draft violation, but who had strong mitigating factors applicable to their case. Some Board members argued that this was a program of clemency for Vietnam-related offenses, and the Board should disregard other, unrelated convictions. Others argued that granting clemency to convicted felons would cheapen the clemency grants. The majority of the Board took the middle view--that a felony conviction would be viewed as a highly aggravating factor, but each case sould be decided on its total facts, in accordance with the President's policy of case-by-case review. Even so, 42% of our applicants with other convictions were denied clemency because of the serious nature of their offense or because they did not present strong mitigating factors.

Less serious felony convictions did not overshadow an applicant's Vietnam service or other mitigating facts.

(Case 9) This applicant volunteered for the Special Forces after his first year in the Army. He re-enlisted to effect a transfer to

Vietnam, where he served as a parachute rigger and earned excellent conduct and proficiency ratings. Altogether, he served for 18 months in Vietnam and over three years in the Army, with two Honorable Discharges for re-enlishment purposes. His AWOL offenses totalled 29 days, did not occur until after his return from Vietnam, and were attributed to his problems with alcohol. After his Undesirable Discharge in lieu of court-martial, he was convicted of stealing a television set and served six months in prison. He was recently paroled.

In a few cases, a clear connection existed between an applicant's Vietnam service and his civilian conviction:

(Case 10) This military applicant served eight months in Vietnam as a supply specialist before his reassignment back to the United States. His conduct and proficiency scores had been uniformly excellent during his Vietnam service. However, while in Vietnam he became addicted to heroin. He could not break his habit after returning stateside, and he began a series of seven AWOL offenses as he "got into the local drug scene." Eventually, he "ran out of money" and "had a real bad habit," so he "tried to break into a store with another guy that was strung out." He was arrested, convicted for burglary, and given an Undesirable Discharge for AWOL while on bail.

Others rehabilitated themselves after their offenses, indicating their desire to be productive and law-abiding members of their communities:

(Case 11) Shortly after receiving a Bad Conduct Discharge from the Navy for his AWOL offenses, this military applicant was convicted for transporting stolen checks across state lines. He was sentenced to a ten-year term, but was paroled after one year and four months. During his confinement, he underwent psychiatric care. Since his parole, he has re-married and established a successful subcontracting business. Currently, he is working with young people in his community in connection with church groups, trying to provide guidance for them. His parole officer stated that applicant had straightened out and is a responsible member of the community.

In each of the above three cases, the Clemency Board recommended that the President recommend an outright pardon.

Obviously, we had no jurisidiction to grant clemency for the unrelated conviction.

Our case disposition tallies are listed below. Civilian applicants received a greater proportion of outright pardons because they involved a higher frequency of conscientious reasons for the offense and a much smaller number of other criminal convictions.

TABLE 2: CLEMENCY BOARD RECOMMENDATIONS: CIVILIAN CASES

	Number	Percent
Outright pardons	1432	82%
Alternative Service:		
3 months	140	8%
4-6 months	91	5%
7+ months	68	4%
No Clemency	26	1%
TOTAL:	1757	100%

TABLE 3: CLEMENCY BOARD RECOMMENDATIONS: MILITARY CASES

	Number	Percent
Outright pardon	4620	36%
Alternative Service:		
3 months	2555	20%
4-6 months	2941	23%
7+ months	1756	14%
No Clemency	885	7%
TOTAL:	12,757	100%

6. Management Process

During the first months of the Board's existence, we experienced little difficulty in organizing our work and reviewing our small number of cases. However, after our late winter flood of applications, we were faced with a seemingly impossible task. Through mid-April, the original nine-member Board had heard 500 cases. To meet the President's deadline of September 15, we had to experience a 40-fold increase in our case resolution rate. We met that deadline--to the day--with the Board deciding every one of the 14,514 cases for which we had enough information. After September 15, 1975, 900 additional cases with partial or recently arriving files were referred to the Department of Justice for action in accordance with Board precedents.

Meeting the President's deadline would have been impossible without a competent and dedicated staff. We and our staff emerged from this process with an experience in crisis management which we think may be useful to managers of comparable entities in the future. The senior staff

developed solutions to management problems which enabled us to act upon over a thousand cases per week. At the same time, it maintained high standards of quality and integrity in our legal process. All policy decisions were made by the Board and implemented by the staff. Having to manage an organization which mushroomed from 100 to 600 employees during a six-week period, it is remarkable that our process involved as little confusion as it did.

7. Historical Perspective

To place the President's clemency program in its proper perspective, one must take note of the manner in which Presidents Washington, Lincoln, and Truman applied their powers of executive clemency in dealing with persons who had committed war-related offenses. President Ford's program is the most generous ever offered, when equal consideration is given to the nature of the benefits offered, the conditions attached, the number of individuals benefitted and the speed with which the program followed the war. Yet the President's program does not break precedent in any fundamental way. The only new features of President Ford's program are the condition of alternative service and the use of a neutral Clemency Discharge.

8. Conclusions

We are proud of what the President has accomplished in his clemency program. He implemented his program courageously, in the face of criticism from those who thought he did too much and those who though he did too little.

When the program started, a Gallup Poll found that only 19% of those polled approved of a conditional clemency program. The overwhelming majority preferred either unconditional amnesty or no program of any kind. By contrast, an August 1975 Gallup Poll found that a majority of those expressing an opinion are now in favor of conditional clemency, with only a small minority equally split on the extremes. The same poll found that almost nine out of ten people would accept a clemency recipient as at least an equal member of their community. Likewise, a survey of employer attitudes has discovered that a Clemency Discharge and Presidential Pardon would have real value when a clemency recipient applies for a job. The clemency program is in fact accomplishing the President's objective of reconciling Americans.

While we are confident that history will regard this program as a success, much of the work remains unfinished. As of September 1975, only a very small percentage of our applicants have as yet been required to contact Selective

Service to begin performing alternative service. Of the 52% of our applicants who received conditional clemency, three quarters were assigned six months or less of alternative service. We hope that most will complete this assignment and receive clemency. The responsibility for implementing the alternative service portion of the program in a fair and flexible manner, fully in accord with the clemency spirit of the President's program, rests with the Selective Service System. Likewise, we are pleased that the United States Pardon Attorney, entrusted with the carry-over responsibility for our program, has applied the policies and spirit of the Clemency Board. Finally, we hope that other government agencies which will later come in contact with clemency recipients--especially the Veterans Administration and the discharge review boards of the Armed Forces--will deal with them as clemently as their responsibilities permit.

In conclusion, we consider ourselves to have been partners in a mission of national reconcilation, wisely conceived by the President. A less generous program would have left old wounds festering; blanket, unconditional amnesty would have opened new wounds. We are confident that the President's clemency program provides the cornerstone for national reconciliation at the end of a turbulent and divisive era. We are proud to have played a role in that undertaking.

Accordingly, the Clemency Board has recommended to Selective Service that applicants be permitted to work on a part-time, volunteer basis to complete short periods of alternative service -- for example, by working sixteen hours per week for a Boys' Club or church group. This way, they can earn clemency within three or six months without losing steady jobs and without taking jobs away from others in their communities.

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Current problems often have parallels in history, and modern solutions may reflect decisions of earlier leaders. In studying President Ford's Clemency Program, one need only look back a hundred years to observe a similar situation confronting another President of the United States. Just days after the Civil War ended, President Andrew Johnson considered declaring an amnesty to heal the wounds of the newly reunited nation. The President sought advice from Attorney General James Speed, who counseled moderation:

> The excellence of mercy and charity in a national trouble like ours ought not to be undervalued. Such feelings should be fondly cherished and studiously cultivated. When brought into action they should be generously but wisely indulged. Like all the great, necessary, and useful powers in nature or government, harm may come of their improvident use, and perils which seem past may be renewed, and other and new dangers be precipitated.[1]

Only six weeks after he become President, Johnson followed Attorney General Speed's advice. He declared a limited and conditional amnesty. To many it was inadequate, while to others it was too generous. To the President, it was a reasonable approach which citizens of all persuasions could find acceptable. Had the President's program not approached the middle ground, the perils and dangers identified by Attorney General Speed might well have come to pass.

Over a century later, President Gerald Ford was concerned about the need to heal America's wounds following another divisive war. Like President Andrew Johnson, he announced a clemency program six weeks after succeeding to office. Like Johnson, he pursued a course of moderation. No program at all would have left old wounds festering. Unconditional amnesty would have created more ill feeling than it would have eased. Reconciliation was what was needed, and reconciliation could only come from a reasoned middle ground.

To the members of the Presidential Clemency Board, the President's program assumed a greater meaning. We came to the Board as men and women whose views reflected the full spectrum of the public opinion on the war and on the question of amnesty. As we discussed the issues, a consensus began to emerge. We all came to see the

President's program as more than mere compromise. It was an appropriate and fair solution to a very difficult problem.

As we examined the President's program, it appeared to us that it was anchored by six principles. Taken together, they provide an excellent means of understanding the spirit behind his clemency proclamation. These principles were implicit in the exercise of our Board's responsibilities under the President's program.

The first principle was one about which there should be little disagreement: the need for a program. After almost nine years of war and nineteen months of an acrimonious debate about amnesty, President Ford decided it was time to act. America needed a Presidential response to the issue of amnesty for Vietnam era draft resisters and deserters. As he created the program, the President authorized three entities -- the Department of Justice, the Department of Defense, and the Presidential Clemency Board -- to review cases of different categories of draft and Military Absence offenders. He appointed nine persons to the newly-created Clemency Board, later expanding its membership to 18 (see Appendix A). He designated a fourth entity, the Selective Service System, to implement the alternative service aspect of the program.

Second, this was to be a limited, not universal, program. Had he included only those who could prove that their offenses had resulted from opposition to war, he would have been unfair to less educated persons. Had he included all persons convicted of military or draft offenses, no matter what the nature of the crime, he would have seriously impaired respect for the law. Instead, the President listed several draft and desertion offenses which automatically made a person eligible to apply for clemency if committed during the Vietnam era. On balance, our data on applicants indicates that he drew the eligibility line generously; of the 113,000 persons eligible, relatively few actually committed their offenses because of a professed conscientious opposition to war.

The third principle was that the program should offer clemency, not amnesty. Too much had happened during the war to permit Americans to forget. The President often stated that he did not want to demean the sacrifice of those who served or the conscientious feelings of those who chose not to serve. But the desire not to forget does not preclude the ability to forgive. President Ford declared that he was placing "the weight of the Presidency in the scales of justice on the side of mercy."[2] He requested that fugitive draft offenders be relieved from further prosecutions, that military absentees be discharged without court-martial, that persons punished for draft offenses receive Presidential pardons, and that servicemen discharged for absence offenses receive Clemency Discharges and Presidential pardons.

His fourth principle was that he would offer conditional, not unconditional, clemency. Eligible persons had to apply to the program for their cases to be considered. Also, most applicants would have to earn clemency through performance of several months of

alternative service in the national interest. Regardless of the motives behind their draft or desertion offenses, they still owed a debt of service to their country. Performance of that service was the prerequisite for clemency.

Fifth he decided that this was to be a program of definite not indefinite, length. There would be an application deadline, giving everyone more than four months' time from the program's inception to apply (later extended by two months). This would permit all cases to be decided within one year, and -- even more important -- it would put an end to the amnesty issue. He hoped that reconciliation among draft resisters, deserters, and their neighbors would take place as quickly as possible. Altogether, about 21,800 eligible persons applied for clemency.

His final principle was the cornerstone of the program: All applicants would have their cases considered through a case-by-case, not blanket, approach. Clemency would not be dispensed or denied automatically, by category, or by any rigid formula. The review of clemency applications would be based upon the merits of each applicant's case, with full respect given to his rights and interests. Case dispositions had to be fair, consistent, and timely.

During our twelve months of existence, the Presidential Clemency Board decided close to 14,500 cases. We tried to apply the spirit of these principles to every case. In this report, we explain what actions we took, what we learned about our applicants, and what we think we accomplished. Where possible, we also try to put the President's entire clemency program in some perspective.

Chapter two consists of a discussion of how each of the President's six principles was implemented. In Chapter three, we describe what we learned about the experiences of the civilian and military applicants to the Clemency Board. We discuss our procedural and substantive rules in some detail in Chapter four, followed by an analysis of our case dispositions in Chapter five. In Chapter six we describe how we managed what was often a "crisis" operation. In Chapter seven we try to put the President's program into an historical perspective through a comparative analysis of other acts of executive clemency in American history. The Report closes with Chapter eight with a discussion of what we think the President's program accomplished. Illustrated this discussion are excerpts from actual Clemency Board cases, plus statistics from a comprehensive survey we conducted from the case summaries of almost 1,500 applicants. Some particularly illustrative cases are presented in more than one chapter.

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A. The Need for a Program--and Its Creation

Regardless of political or philosophical perspective, all will agree that the war in Vietnam had a significant impact on our country and on the lives of most American citizens. The war resulted in the loss of hundreds of thousands of lives, including the lives of fifty-six thousand American servicemen. It forced many more people to leave their homes and countries. Nightly, television brought the war into American living rooms. For the first time, the average citizen witnessed the reality of war, almost at first hand. Conflict between pro-war and anti-war advocates increased dramatically. Slogans such as "America, Love It or Leave It," "Peace with Honor," and "Unconditional Amnesty Now" came to be symbolic of the divisions in our country. Patriotism meant different things to different people. Many believed that love of country could best be demonstrated by defending America's interest on the battlefield. Others insisted that love of country required a crucial reversal of national policy. They felt that by opposing the war and resisting military induction, they could serve America best by influencing changes in its foreign policy.

Overshadowing the political consequences of the war were the personal tragedies. Thousands of Americans lost their lives, and thousands of American families lost their loved ones. Untold hundreds of thousands must bear physical and psychological scars for the remainder of their lives. Nothing can ever be done to compensate for the supreme sacrifice of those who die or lose their loved ones. Nonetheless, this does not preclude a subsequent decision to be merciful toward those who did not serve.

After the war ended, it remained clear that America had suffered other casualties as well. The war affected the lives of tens of thousands of young Americans who had chosen not to serve. Their families and friends shared their burden of exile, imprisonment, and separation.

Shortly after assuming office, President Ford sensed the need to "bind the Nation's wounds and to heal the scars of divisiveness."[1] As one of his first initiatives as President, he issued Proclamation 4313, creating the Clemency Program. The President believed that "in furtherance of our national commitment to justice and mercy," it was time to achieve a national "reconciliation"

with the greatest degree of public cooperation and understanding.[2] To outline how his program was to be implemented, he issued Proclamation 4313 and an accompanying Executive Order. (See Appendix B.) When the program began on September 16, 1974, a year and a half had passed since the last American combatant had left Vietnam.

President Ford recognized that desertion and draft evasion and unauthorized military absence are serious offenses which, if unpunished, might have an adverse effect on military discipline and national defense. Nevertheless, he recognized that "reconciliation among our people does not require that these acts be condoned."[3] It did require, however, that these offenders have an opportunity "to contribute a share to the rebuilding of peace among ourselves and with all nations, (and)...to earn return to their country."[4] He entrusted the administration of the Clemency program to three existing government agencies -- the Department of Justice, the Department of Defense, and the Selective Service System -- and created the Clemency Board within the Executive Office of the President to consider applications from people not already under the jurisdiction of the Departments of Justice and Defense. These four governmental units were ordered to implement a program offering forgiveness and reconciliation to approximately 113,000 draft resisters and military deserters.

Unconvicted draft evaders were made the responsibility of the Justice Department.[5] Members of the Armed Forces who had remained at large as unauthorized absentees came within the purview of the Defense Department's program.[6] The vast majority who had already been convicted or otherwise punished for Vietnam-era draft or military absence offenses became the responsibility of the newly created Presidential Clemency Board.

On September 16, 1974, the President appointed nine persons to this Board. Former United States Senator Charles E. Goodell was designated as Chairman.

Beginning in September, the Board met on a regular basis in Washington, D.C. As the number of applications swelled from 860 in early January to 21,500 by the end of March, it became apparent that the nine original Board members and the initial staff of less than 100 could not complete the Board's work within the twelve-month deadline set by the President. In May 1975, the President expanded the Board to eighteen members and authorized a staff of over 600 to complete the work on time.

The original nine-member Board was broadly representative of national feelings on the war and on the issue of amnesty and clemency. The expanded Board of eighteen was carefully selected to preserve this balance, including members with widely ranging experiences and points of view. Many had spoken out strongly against the war, some having advocated unconditional amnesty. Others believed that our mistake lay in not pursuing the war effort more vigorously.

All Clemency Board members were aware that the President's program had to be implemented carefully to avoid having a serious impact on military discipline and to avoid impairing our strength in a future military emergency. The Board consisted of thirteen veterans of military service, three women, and two priests. Five were Vietnam veterans, two of whom were seriously disabled in combat. Another commanded the Marine Corps in Vietnam. One Board member had a husband listed among those missing in action. Two Black men, one Black woman and one Puerto Rican woman were on the Board. We also had a former local draft Board member, an expert in military law, and others with special backgrounds and perspectives which contributed to a well-balanced Board.[7] (See Appendix A.)

B. A Limited, Not Universal, Program

When the President announced his clemency program, he had to draw a line between those who were eligible and those who were not. That line was drawn in a generous manner. In order to encompass Vietnam-era offenders who opposed the war on conscientious grounds, the President enumerated a sizeable list of offenses. He decided not to impose a test of conscience. It would have been improper to regard those who could articulate their opposition to the war as the only persons with a legitimate claim to clemency. The complex Selective Service procedures tended to favor the better-educated and the sophisticated. Those who were not able to express themselves may still have had strong feelings about the war, but may not have been successful in pursuing their legal opportunities. A fair program of clemency could not be restricted to those already favored by education, income, or background.

In a broader sense the atmosphere of division, debate, and confusion about the war had an impact on all those called upon to serve. If the war had been universally regarded as critical to the survival of the United States, it is unlikely that many of these Americans would have placed their personal needs or problems above those of the country. This war was not universally regarded as such, and many of those who failed to serve did so, consciously or not, because the needs of the country were not as evident to them as were the personal sacrifices they or their families faced.

For these reasons, the President's definition of those eligible for clemency was phrased in terms of offenses committed, not in terms of the reasons for the offense. The President extended this clemency offer to veterans who went AWOL (absent without official leave) to find medical assistance to treat their combat wounds, to cope with readjustment problems after returning from Vietnam, or to support families forced to go on welfare. Likewise, he extended it to civilians from disadvantaged backgrounds whose ignorance and itinerancy led to their failure to keep their draft boards informed of their whereabouts. In the

thousands of cases we have reviewed, we found that the list of victims of the Vietnam War was of much greater variety than we had originally thought.

Eligibility Criteria for the Program

The Presidential Proclamation established three criteria for eligibility. First, the program applied only to offenses that occurred during the war period. This was defined as extending from the passage of the Gulf of Tonkin Resolution (August 4, 1964) through the day the last American combatant left Vietnam (March 28, 1973). Second, an applicant must have committed one of the offenses specifically listed in the Proclamation. Military applicants must have violated Article 85 (desertion) of the Uniform Code of Military Justice, Article 86 (absence without leave), or Article 87, (missing movement). Civilian draft offenders must have committed one of the following violations of Section 12 of the Selective Service Act: (1) failure to register for the draft or register on time; (2) failure to keep the local draft board informed of his current address; (3) failure to report for or submit to preinduction or induction examination; (4) failure to report for or submit to induction; or (5) failure to or complete alternative service. Third, an applicant must not have been an alien precluded by law from reentering the United States.[8]

The eligibility tests set by the President no doubt excluded some fugitives, convicted offenders, and discharged servicemen whose offenses were motivated by their opposition to the war. For example, there were a few military applicants who, out of conscientious objection to the war, refused to report to Vietnam. Instead of going AWOL, these men faced court-martial for willful disobedience of lawful order. Had they gone AWOL, they could have applied clemency; because they remained on their bases and accepted the punishment for their actions, they still have their bad discharges. Also, persons convicted of or charged with other Selective Services offenses, such as draft card mutilation or aiding and abetting draft evasion were ineligible for clemency because these were not among the offenses listed in the Executive Order.

Before the President announced his program, there had been considerable debate in Congress and elsewhere about the kinds of offenses that properly should be included in a clemency or amnesty program. As with most disputes on the subject, opinions varied greatly. There was general agreement, however, that absence and induction offenses should be included because the vast proportion of Vietnam-related offenses were of this type. Had the President's program included categories of offenses involving calculated interference with the draft system or with military discipline, or involving violence or destruction of property, it would have had a far more serious impact on respect for law and military discipline.

Eligibility for the Presidential Clemency Board

Applicants eligible to apply to our Board included only those who had been convicted or punished for the above offenses.[9] For a civilian to be eligible, he must have been convicted of one of the Selective Service violations listed above. For a former serviceman to be eligible, he must have received an Undesirable, Bad Conduct, or Dishonorable Discharge as a consequence of his absence offenses. Anyone discharged with either an Honorable or a General Discharge was not eligible.

The Proclamation prevented our Board from accepting cases in which the underlying facts of the offense may have supported a charge over which we had jurisdiction, but in which the individual was in fact prosecuted for a nonqualifying offense. The Executive Order clearly stated that the discharge must have been based on unauthorized absence. Thus, a conviction for failure to obey an order to go to an appointed place must have also been charged as an AWOL.[10] A serviceman discharged for a civilian conviction could also have been discharged for unauthorized absence while in civilian custody.[11] There were numerous gray areas in which difficult jurisdictional determinations had to be made.

The other agencies had accurate counts of individuals eligible for their programs; 4,522 were eligible for the Justice program, and 10,115 for the Defense program. We had to rely entirely on estimates which these agencies gave us. Our 8,700 total for civilian eligibles came directly from Department of Justice records. Our 90,000 figure for military eligibles is 80% of the 111,500 originally estimated by the Department of Defense from their records of AWOL-related discharges. We reduced that later figure by 20% because the Department of Defense found that its original estimate of persons eligible for its own program was 20% too high; they reduced it from 12,600 to 10,115 through a closer inspection of records. We expect that the same attrition would result from a close inspection of our own eligible persons' records.

We recognized that this was a clemency program, requiring us to interpret our jurisdictional boundaries broadly. To be narrow and unduly legalistic in determining eligibility would have been contrary to the spirit of the program.

The military cases presented difficult questions of interpretation. For example: "The Board...shall consider the case of persons who...have received punitive or undesirable discharges as a consequence of violations of Articles 85, 86, or 87...."[12] The phrase "as a consequence of" gave us particular difficulty. We decided that the phrase did not mean "as a consequence of" an AWOL only. In many cases, individuals had been administratively discharged for unfitness or frequent involvement with authorities based on a pattern of offenses, including AWOLs, none of which warranted a court-martial. The AWOL had to be viewed as a contributing factor, if not the sole cause of the discharge.

This occasionally meant that an individual might have been administratively discharged for unfitness for a very short AWOL, plus numerous other minor infractions. It was impossible to devise any objective method to separate the reasons for the discharge. The military services leave administrative discharges for unfitness to the discretion of commanders. They do not have binding rules on the character of misconduct necessary to warrant an Undesirable Discharge.

We recognized the dual need to have clear and objective jurisdictional rules, while at the same time retaining flexibility to make correct dispositions in cases in which a short AWOL was an insignificant factor in the discharge. We decided that the need for clear and consistent jurisdictional rules required us to accept these marginal cases, since the right to have one's case heard should be broadly granted. However, the fact that an applicant had committed military offenses other than AWOL sometimes resulted in a denial of clemency, a consequence perhaps more detrimental than a denial of jurisdiction.

The court-martial cases presented similar difficulties because sentences were not rendered separately when an individual was convicted on several different charges, one of which was an AWOL. Since an individual might well have been court-martialed for a major felony together with a very short AWOL, it was obvious that the discharge would have been awarded regardless of the AWOL offense. In court-martial cases, however, military regulations define the maximum punishments for different offenses. Thus, we consulted the Manual for Courts Martial, Table of Maximum Punishments[13] to formulate simple rules to determine when we had jurisdiction in cases involving court-martial discharges. We applied the same rules to administrative discharges given in lieu of court-martial. As a general rule, we determined that:

1. We had jurisdiction if the AWOL offenses that commenced within the qualifying period standing alone were sufficient to support the discharge that the applicant received;

2. We had jurisdiction if neither the AWOL offenses that commenced within the qualifying period nor the non-AWOL offenses, considered independently, were sufficient for the discharge that the applicant received;

3. We did not have jurisdiction if the AWOL offenses that commenced within the qualifying period were insufficient and any one of his other offenses, considered independently, was sufficient for the discharge that the applicant received.

The exclusion from the program of persons who were precluded by law from re-entering the United States also posed difficult problems. If an order of a court or the Immigration and Naturalization Service had already decided the question, we were bound by that determination. But we considered it not within our province to decide complex questions of immigration and citizenship law. For that

reason, we provisionally accepted the cases of persons for whom no such determination had yet been made. We made tentative decisions on these cases, forwarding them to the President with a recommendation that he not act until proper judicial or administrative determinations had been made by the Justice Department.

Altogether, we received approximately 6,000 applications from ineligible persons. Many had committed offenses during other wars, had received General Discharges, or had been discharged for offenses not listed in the Proclamation. While we could not help them directly, we informed each one by letter of other legal and administrative remedies available to them.

C. CLEMENCY, NOT AMNESTY

In the years before President Ford assumed office, opinion was sharply divided over whether there should be any restoration of the rights and benefits offered by the government to Vietnam-era draft and AWOL offenders. Many citizens believed that the offenders' rights and benefits, including full veterans benefits, should be restored. Others insisted that they be given nothing. President Ford chose the middle course.

To unconvicted draft offenders, the President offered the promise that they would not be punished for their actions, enabling them to avoid the lifetime stigma of a felony conviction. Their prosecutions would be dropped. All others whose cases had not yet resulted in a decision to prosecute were relieved of any future danger of prosecution.

To undischarged military absence offenders, the President offered an immediate end to their fugitive status, with the promise that they would not be court-martialed or imprisoned for their offenses. They would receive an immediate Undesirable Discharge and an opportunity to earn a Clemency Discharge. To a small number of fugitive servicemen with exceptionally good records or other special circumstances, application to the program could also result in reinstatement in the military or an immediate discharge under honorable conditions through normal military channels.

To convicted draft offenders, the President offered official forgiveness for their actions through the highest constitutional act available to him. They would receive a full Presidential pardon.

To military absence offenders who had received bad discharges, the President offered official forgiveness in the form of a full Presidential pardon, and an upgrade to a Clemency Discharge.

To those who were still serving prison terms for desertion or evasion, the President directed an immediate furlough for each person who applied for clemency. With the

exception of one person who chose not to participate, each of the roughly 100 incarcerated civilians and 170 incarcerated servicemen who applied to the Presidential Clemency Board were released. Under the President's direction, the Presidential Clemency Board gave priority to those cases, and all had their sentences permanently commuted.

In the remainder of this section, we describe in more detail the dimensions of the President's program, and compare it to the relief which might have been available under an "amnesty" program. In doing so, we explore the sources of the President's power to grant executive clemency.

"Clemency"

Clemency can be defined as the tendency or willingness to show forbearance, compassion, or forgiveness in judging or punishing, or as an act of mercy or lenience.[14] The President's authority to grant clemency is derived from a number of powers given him by the Constitution. His Constitutional authority to grant pardons[15] permits him to grant clemency to a particular person or group of persons. In granting a pardon, a President is often prompted by the desire to show compassion or leniency. It is not necessary that the individual be convicted of, or even charged with, an offense.[16] He may commute sentences and fines, but he may not order the return of sums already paid.[17] Also he may grant stays or relief from execution of sentence -- a constitutional "reprieve" or commutation. Although only the President can grant pardons, the Pardon Attorney in the Department of Justice administers the process in his behalf.

The President, as Commander-in-Chief of the Armed Forces;[18] may request any branch of military service to upgrade a bad discharge. Through the executive power vested in him, the President may request subordinate federal officers not to enforce criminal statutes against an individual to whom he wants to grant clemency.[19]

The Constitution grants the President the sole discretion to exercise his pardoning power. He is not answerable to the judiciary or to the Congress for his decision to grant or to refuse to grant a particular pardon. He may not be ordered to grant pardons, nor may his pardons be revoked.[20] Barring an impeachable abuse of his powers, the President is answerable in his exercise of this power only to his conscience, to his understanding of the national welfare, and to the public -- whose acceptance is necessary to give full meaning to his act of executive clemency.

The Presidential pardon is the supreme constitutional act of forgiveness or mercy. It is an expression of society, through the Chief Executive, signifying that it will disregard the offense for which an individual was originally prosecuted. It thus removes the social blot of a criminal conviction and relieves any continuing impairment of federal civil rights. Because a pardon is an act of

executive grace, it may be given to right a wrong, to correct an injustice, or to excuse a repentant wrongdoer. It may be offered to ease the harshness of the law when personal hardship or the public good is involved.

A Presidential pardon restores Federal civil rights lost as a result of the conviction, such as the right to hold federal office or to sit on a federal jury. Also, most states recognize a Presidential pardon as a matter of comity, restoring the right to vote, to hold office, and to obtain licenses for trades and professions from which convicted felons are often barred. A pardon does not change history, and it does not compensate for any rights or benefits, legal or economic, that the individual has already lost before his pardon. It operates prospectively only. A pardon is a Presidential expression that the stigma of conviction has been removed, and that its recipient should no longer be discriminated against when seeking jobs, credit, housing, or any other opportunities. However, a pardoned offender is not considered as though he never committed the offense.[21] A full pardon removes most of the legal disabilities of the offense, but it does not bring its recipient treatment equal to that accorded a person who has never committed an offense.[22]

Although the Executive Order did not state explicitly that a Presidential pardon was to be the form of clemency offered to applicants to the Clemency Board, the President soon made it clear to us that this was his intent. The President confirmed the Board's understanding that he wished a pardon to be the form of clemency offered to convicted evaders and to military absentees, whether they had been discharged by court-martial or by administrative action. No other form of clemency action would have had meaning. The grant of a pardon to a person who had been discharged without a court-martial conviction was a generous gesture, but not a break from precedent. A President pardons the act, not merely the judicial consequences that may have flowed from it. Previous Presidents granted pardons to persons who had suffered administrative penalties for a wrongful act, even though they had never been convicted of a crime. President Ford therefore decided that he would offer pardons to the persons who had been given Undesirable Discharges for AWOL offenses but who had not been convicted in a military court. This group comprised 60% of the military applicants to the Presidential Clemency Board.

The penalties for violation of military discipline differed from those for violation of civilian law. A military offender not only could receive a conviction and a sentence of imprisonment or a fine, but he also could be released with a discharge which characterizes his military service as unsatisfactory. While a pardon affects the conviction, it has no impact on the type of discharge granted. For that reason, the President provided that a recipient of clemency should also have his discharge recharacterized as a Clemency Discharge, a new designation created specially for this program.

The Clemency Discharge was intended by the President to be a "Neutral" discharge, to be considered neither under

"Honorable Conditions" nor under "Other than Honorable" conditions. Military records are recharacterized with the new Clemency Discharge, which is in substitution for the earlier Bad Conduct or Undesirable Clemency Discharge (under other than honorable conditions) or Dishonorable Discharge (under dishonorable conditions). A Clemency Discharge is neutral, better than the discharge it replaces but not as good as a General Discharge, which is given affirmatively under honorable conditions.[23] By express direction in the Proclamation, a Clemency Discharge bestows no veterans' benefits itself. Nor, however, does it adversely affect the conditional availability of veterans' benefits to holders of Undesirable or Bad Conduct Discharges. Otherwise, the President's act of clemency would have had the effect of impairing and not improving an applicant's status. Neither common sense nor the language of the Proclamation supports such a result.

The President's program was intended as a unique and supplemental form of relief to certain classes of former servicemen. It did not deny pre-existing statutory or administratively granted avenues of relief that While perhaps the relinquishment of those rights could have been made a condition of the President's program, no such condition was expressed in his Proclamation. For that reason, all military applicants who receive a Clemency Discharge can still apply for a further upgrade through the appropriate military review boards. Likewise, they can still appeal for benefits to the Veterans' Administration.[24] Their chances for success should be much better with a pardon and Clemency Discharge than with their original discharge and record of unpardoned offenses.

While the Clemency Board recommended most applicants for pardons and Clemency Discharges, the Department of Justice and Department of Defense also provided applicants with important benefits. Every person eligible to participate in the Defense and Justice program was in jeopardy of a conviction. The Department of Justice program had the effect of dropping pending federal criminal prosecutions against fugitive civilians who were indicted or had investigations pending for a specific draft evasion offense. The Department of Defense program gave relief from possible court-martial proceedings against military absentees.

In some respects, the Department of Justice program offered the greatest restoration of rights. Fugitive civilians charged with draft evasion offenses faced the possibility of a criminal conviction, a maximum of five years in prison, and a $10,000 fine[25]. In return for up to two years of alternative service, their prosecutions were dropped. They were also freed from the enduring stigma of a felony conviction. Therefore, applicants to the Justice program could emerge with better records than their counterparts in the Clemency Board program, since it is better to have no felony conviction than to have one which has been pardoned.

The Justice program also resulted in the closing of case files of all civilians who may have committed specific Vietnam-era draft offenses but who had not yet been

indicted. After the program began, the Department of Justice directed all United States Attorneys to submit a list of all persons against whom they either had or would soon have indictments issued. Prior to this request, 6,239 prosecutions had been commenced by the United States Attorney, and thousands of other investigations were underway which could have resulted in indictments. As the lists were submitted, 1,717 active prosecutions were dismissed. The Attorney General declared that the Department of Justice would not prosecute Vietnam-era draft violators who were not on the final list of 4,522 persons, except for persons who never registered for the draft. The other 1,717 individuals with prosecutions pending had their cases permanently dropped. If they were in exile and had committed no other offenses, they were free to come home.[26] If they were in the United States, they could plan for the future without worry. The same was true for an indeterminant number of other individuals who had been cited for a possible draft violation by Selective Service, and whose cases had been referred to the Justice Department for further action.

By participating in the Defense program, fugitive AWOL offenders automatically ended their fugitive status and were relieved of the prospect of up to five years imprisonment and a Dishonorable or Bad Conduct Discharge. They spent one to three days at Fort Benjamin Harrison and received an Undesirable Discharge. They could then perform alternative service in order to earn a Clemency Discharge. Even if they subsequently fail to complete alternative service, no changes can be brought against them unless it can be shown that they did not intend to perform alternative service when they received their Undesirable Discharge. At a minimum, they re-enter society in vastly improved circumstances.

The Defense program provided a special form of clemency to forty-eight applicants. Most of these individuals had served meritoriously in Vietnam or had been the victims of serious administrative errors which led to their offenses. Forty-six received immediate discharges under honorable conditions, thereby qualifying for full veterans' benefits. Two were allowed to return to military service with no penalty. They were much like the individuals whom the Clemency Board had recommended to receive upgraded discharges by the President for discharge upgrades to honorable conditions.

Not "Amnesty"

The debate over the President's program was often framed in terms of whether the President should have granted "amnesty" and not merely "clemency." The word amnesty derives from amnestia, the Greek word for forgetfulness. It connotes full official forgetfulness, an obliteration of the fact that a past offense ever existed. It restores rights and benefits lost on account of the past offense to the maximum effect possible under law.

"Its effect is to obliterate the past, to leave no trace of the offense, and to place the offender exactly in the position which he occupied before the offense was committed -- or in which he would have been if he had not committed the offense."[27]

The difference between amnesty and clemency is as much a semantic dispute as anything else. The terms amnesty and clemency have been used interchangeably in American history. Indeed, there is no significant legal difference between a pardon and an amnesty:

"some distinction has been made, or attempted to be made, between pardon and amnesty. It is sometimes said that the latter operates as an extinction of the offense of which it is the object, causing it to be forgotten, so far as the public interests are concerned, whilst the former only operates to remove the penalties of the offense. This distinction is not, however, recognized in our law. The Constitution does not use the word "amnesty," and, except that the term is generally employed where pardon is extended to whole classes of communities instead of individuals, the distinction between them is one rather of philological interest than of legal importance."[28]

The differences between advocates of clemency and advocates of amnesty do not involve exercise of the President's pardon powers, but rather rights or benefits that should be offered in a reconciliation program. Under the President's program, civilian participants who were not yet prosecuted could receive as much as could be offered -- release from further prosecution. Those who already been prosecuted and convicted were offered a pardon, which is the most a President could give to a convicted offender. Even though the President may grant a particular group of convicted individuals an "amnesty," each member of the group would receive nothing more than a pardon. To return any fines paid, compensate for time spent in prison or expunge and erase all records of a conviction, Congressional action would be required. However, the President could have directed that Executive Branch records of conviction be sealed. Also, he legally could have offered more benefits to military participants. Through his authority as Commander-in-Chief, he could have directed that they receive discharges under honorable conditions, with full entitlement to veterans' benefits.

In effect, the President offered most, although not all, of the benefits which the law and the Constitution permitted him to dispense.

D. Conditional, Not Unconditional, Clemency

The President extended his offer of clemency in a spirit of reconciliation. He expected those to whom his offer was made to accept it in the same spirit. This meant two things: first, the individual had to step forward and apply for clemency; second, he had to be willing to perform a period of alternative service. The conditional nature of the President's Program most clearly distinguished it from proposals for unconditional amnesty.

The constitutional power to pardon and grant reprieves carries with it the power to condition these forms of clemency upon the performance of certain conditions before or after any grant. The Supreme Court of the United States recently stated:

> ...this Court has long read the Constitution as authorizing the President to deal with individual cases by granting conditional pardons. The very essence of the pardoning power is to treat each case individually.[29]

Condition of Application

The President could have directed the Board to review the cases of all those eligible without the requirement of an application. The condition of application required that individuals had to take some initiative to show their interest in reconciliation. Further, the grant of a pardon must be accepted by the recipient to be effective. It would have been a useless gesture to review the cases of persons who would have later declined the President's offer.

The Executive Order gave the Board discretion to determine acceptable applications, and we decided to make the process as easy as possible. 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 application deadline of March 31, 1975, and express an interest in participating. Written inquiries were acceptable if mailed not later than March 31.

We accepted no applications submitted after the President's deadline. We strictly construed this rule, rejecting approximately 500 late applications.

Applications misdirected to consulates, probation offices, and Congress were all considered acceptable, because many applicants were confused about the division of responsibility among the four agencies implementing the program. If this contact was in writing by the applicant himself or his attorney, it was a valid application. If the initial filing was made over the telephone or by someone other than his attorney, the applicant was given until May 31, 1975, to confirm the contact in writing.[29] Individual cases sometimes presented difficult questions of proof,

especially when persons made uncorroborated oral applications to other federal officials.

> Living in Canada at the time, applicant alleged that he telephoned a U.S. Consulate prior to March 31 and had been told that the deadline did not apply to his case. Unfortunately, the Consulate kept no records of inquiries about the clemency program. The applicant re-entered the United States in early April after completing his Canadian employment obligations. He immediately appeared at a United States Attorney's office.

In the above case, the question of timeliness turned on the credibility of the applicant. After a personal appearance, the Board was persuaded of the applicant's truthfulness, and the members voted unanimously to accept his application.

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. We made repeated phone calls and mailings to thousands of applicants who had submitted timely but incomplete applications. Despite repeated efforts to obtain more information, we ended our work on September 15, 1975, with 900 applications for which we were unable to obtain the facts necessary to make our decision. These cases were returned to the Pardon Attorney for further investigation and processing in accord with Clemency Board standards and precedents.

The application requirements of the Justice and Defense Programs of the Program were specified in the Executive Order. Their applicants had to appear in person to participate. Both the Departments of Justice and Defense required that an individual return to the United States if in another country, report to a Department office, acknowledge allegiance to the United States,[31] and pledge to perform alternative service. The Department of Justice required that, upon entering the United States, a convicted draft evader had fifteen days to present himself to the United States Attorney in the judicial district in which his draft evasion offense had occurred. This had to occur not later than March 31, 1975. If an unconvicted evader failed to comply, he remained subject to prosecution for his draft evasion offense. In fact, no one was prosecuted during the application period for failing to report within fifteen days.

To receive clemency through the Department of Defense's segment of the program, an undischarged AWOL offender had to return to the United States, surrender to any military base not later than March 31, 1975, and travel to the Joint Clemency Processing Center in Indiana. When he affirmed his allegiance and agreed to perform alternative service, he was given an Undesirable Discharge. He then could perform his assigned alternative service to earn an upgrade to a Clemency Discharge.

Condition of Alternative Service

Those who were required to perform alternative service under any part of the President's program came under the jurisdiction of the Selective Service System. Clemency Board applicants had thirty days from the date that we informed them of the President's clemency offer in which to enroll with Selective Service. Department of Defense and Department of Justice applicants had fifteen days in which to enroll.

All individuals assigned to alternative service were informed that under Selective Service rules they could work anywhere in the United States. To enroll, they had to travel to their desired area of residence and contact the nearest office of Selective Service. There are now about 650 such offices throughout the United States. Initially, the applicant had the opportunity of finding a job of his own choosing. He was encouraged by Selective Service to find work which utilized his special talents. If he found a suitable job himself, his state Selective Service Director had to determine if the job met the following criteria:

a. The job must be full-time (forty hours per week) and must promote the national health, safety, or interest.

b. The enrollee cannot fill a job for which there were more qualified applicants than there were spaces available.

c. The job must be with a non-profit organization.

d. Unless he obtains a waiver from his State Selective Service Director, his pay 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.[32]

If the enrollee did not find a suitable job, the State Selective Service Director had to find 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 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, time would begin to be credited to his alternative service commitment on the thirty-first day following his enrollment. While this provision has permitted some an individuals to earn clemency without having a job, it has avoided penalizing a person willing to serve but for whom no job has been available.

To avoid this problem, our Board recommended to Selective Service that individuals in our program be able to fulfill their alternative service by performing volunteer work in the national interest for 16 hours per week for the designated period--three or six months in most cases.

According to Selective Service, alternative service jobs have offered some individuals the beginning of a new career:

> A former Marine's alternative service consisted of assisting a jailer. He adapted well to his job, attended 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.

As of October 1, 1975, 128 enrollees completed their periods of alternative service under the President's program. As the table below indicates, the Department of Defense program has the highest number of applicants in this category. Others have begun their jobs, but -- unfortunately -- many others have not.

TABLE 4: INFORMATION ON ALTERNATIVE SERVICE PERFORMANCE

Status*	DoD	DoJ	PCB	Total
New Enrollees	66	46	212	324
Referred to Jobs	342	71	87	500
At Work	1269	480	102	1851
Job Interruption	135	30	4	169
Referred to Second Job	56	21	1	78
Postponed	60	17	7	84
Completed	100	21	7	128
Terminated	2479	41	10	2530
Total*	4507	727	430	

*Some applicants are classified in more than one category.

The success of the Department of Justice in having its applicants do alternative service probably 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 were later terminated for failing to accept the designated employment.

So far, very few of our applicants have had to enroll with Selective Service. Since almost all of our applicants

were informed of the President's decision in their cases after August 1975, we do not yet have adequate information on the number of persons in our program who have begun alternative service. Unlike the other two agencies administering the programs, we were unable to counsel our applicants in person. What contacts we had with them suggest that many may not understand some basic facts about their alternative service obligation. Others may not appreciate their rights with respect to job selection or termination. The generally low level of education and sophistication of our applicants, and their previous failures to abide by draft board or military rules, underline this possibility. Also, the short alternative service assignments of three to six months may make it harder for Clemency Board applicants to find jobs. According to Selective Service, many employers are unwilling to offer jobs to individuals willing to work for only a few months.

We believe that the true measure of our work lies not in the number offered clemency, but rather in the number who successfully fulfill the conditions we recommended and actually earn their pardons.

E. A Program of Definite, not Indefinite, Length

When President Ford announced the establishment of his clemency program, his Proclamation specifically limited the period of time in which applications could be accepted. Originally, he set January 31, 1975, as the application deadline. Due to the publicity and press coverage that heralded the announcement of the Clemency Program, we and the others newly involved in its administration assumed that all eligible people would quickly learn about the program and understand what benefits could be derived from applying for clemency. Therefore, we thought that four and one-half months gave potential applicants ample opportunity to decide if they wished to apply.

For the first three months of its existence, the Presidential Clemency Board maintained a low profile. We reasoned that people should not be pressured while making up their minds whether to apply and that it would be improper for us to solicit their applications. Because we assumed that those covered by the program knew about their eligibility, we decided to process our applications without trying to encourage anyone to apply to us.

We soon learned, however, that our assumptions were incorrect. After reviewing the first several hundred cases, we discovered that most of our applicants were not well-educated, articulate persons, but rather were poorly-educated, disadvantaged individuals who were not likely to be informed about the President's program. Our military applicants, in particular, did not fit the stereotype of the knowledgeable, educated war resister. In the middle of December, when only about 800 people had applied to the

Clemency Board, a limited survey of potential military applicants took place in Seattle, Washington. A veterans' counseling organization located twelve former servicemen eligible for our segment of the program. All twelve knew about the President's offer, but none of them knew that it applied to former servicemen.

This misconception was reinforced by much of the early media attention given the program, highlighting the activities of those who fled to Canada. It was the self-exiled draft evader and military deserter who formed the basis of the stereotype which most Americans perceived as eligible for the program. Because they had fled, they generally knew that charges were pending against them and that returning without applying for clemency meant apprehension, trial, and possible conviction. In contrast, the vast majority of our applicants had already completed the punishment for their offense and were trying with varying success to rehabilitate their lives. Many had heard about the clemency program, mistakenly thinking that it was only for those who had gone to Canada.

Once we realized that many of those eligible to apply to the Clemency Board us knew nothing about their eligibility, we began an extensive public information program. On January 7, 1975, through the cooperation of the Administrative Office of the U.S. Courts and U.S. Probation and Parole Offices throughout the country, 7,000 information kits were mailed to convicted draft evaders. Throughout the month of January, similar kits were mailed to government agencies that had some contact with the Board's applicants, such as the Veteran's Administration, employment offices, welfare offices, penal institutions, and post offices. Clemency Board members Walt and Hesburgh taped public service radio and television announcements explaining how one could apply to the Clemency Board. On January 14, 1975, these announcements were mailed to 2,500 radio and television stations across the United States. During January, seven members of our Board participated in one-day "blitzes" in sixteen of the major cities across the country. These visits consisted of a Board member going to a city for one day, holding press conferences, participating in various radio and television talk shows, and giving interviews to reporters from the city's major newspapers. To keep national media focused on the program, Chairman Goodell held numerous press conferences in Washington, D.C., and elsewhere during January.

The result of our public information campaign was a dramatic increase in our application rate. Applications to the Board increased from 870 on January 7, 1975, to 5,403 before expiration of the January 31st deadline. Due to this increase, the President extended the application deadline to March 1, 1975.

The public information campaign was continued in earnest. On February 17, 1975, the Department of Defense mailed 21,000 information kits to discharged military personnel with punitive discharges who appeared eligible for the program. Kits were not sent to the 75,000 eligible persons with administrative discharges because of the

excessive costs of obtaining their addresses and the difficulty of identifying which among hundreds of thousands of administrative discharges during the Vietnam era had resulted from AWOL-related offenses.

More information kits were sent to government agencies, and radio and television announcements were distributed to another 6,500 stations. Several Board members made additional one-day visits to eight key cities, some of which had previously been visited. Chairman Goodell continued to hold press conferences in order to draw attention to prior misunderstandings concerning our eligibility criteria. Finally, the media began to recognize the difficulties we were having in communicating with our potential applicants.

Again there was a dramatic increase in our application rate. An additional 6,000 applications were received during February, with our total exceeding 11,000. At our request, the President extended the application deadline for one last time. Knowing that March 31, 1975 was going to be the final deadline, we intensified our efforts to reach our applicants. We sent staff members across the country to regional offices of the Veterans Administration. Workshops in thirty-three cities were attended by over 3,000 veterans' counselors -- most of whom, surprisingly, had not yet learned that former servicemen with bad discharges were eligible for clemency.

We received over 10,000 applications during March, making a total of 21,500 by the time we finished counting. We had ten or twenty times what we once thought possible. Eventually, we determined that 15,468 of those 21,500 were eligible for our program.

The administrators of the Departments' of Justice and Defense Department programs also attempted to inform their potential applicants. Letters were sent by the Department of Justice to the last-known address of each person subject to indictment, and many applicants used these letters to facilitate their re-entry across the border. In December, the Department of Defense mailed 7,000 letters to the parents of known military absentees.

The final application tallies were 706 out of 4,522 eligible for the Justice program (a 16% response);[33] 5,555 out of 10,115 eligible for the Defense program (a 55% response);[34] 1,879 out of 8,700 convicted civilians eligible for the Clemency Board program (a 22% response); and 13,589 out of approximately 90,000 former servicemen also eligible for the Clemency Board program (a 15% response). Altogether, 21,729 applied to the President's program, 19% of the 113,300 believed eligible to apply.

F. A Case-By-Case, Not Blanket, Approach

The President specifically requested that each agency act upon clemency applications on a case-by-case basis. His Proclamation declared that

> "in prescribing the length of alternative service in individual cases, the Attorney General, the Secretary of the appropriate Department, and the Clemency Board shall take into account such honorable service as an invidual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among those who participate in this program."

The very essence of the pardoning power is to treat each case individually. The Supreme Court of the United States has consistently read the Constitution to authorize the President to exercise his pardon power on a case-by-case basis[34].

A case-by-case approach was more costly, requiring greater time and staff to administer, but it was the heart of the President's program. It permitted the Clemency Board and the other agencies to distinguish among individuals with differing backgrounds, offenses, and circumstances. While more difficult to administer, the case-by-case approach enabled the program to render justice by fashioning results to fit the many differing people who applied to the program. Advocates of a blanket approach often believed that the stereotype of the articulate pacifist who acted on principle was the only type of individual involved in the program. In fact, only 13% of applicants to the Clemency Board committed their offenses primarily because of opposition to war. (See Chapter 3.)

Treating applicants by classes or groups, with automatic dispositions for each category, would have demeaned the value of a Presidential pardon; it would have treated the individuals who applied as groups of objects, rather than as human beings with whom reconciliation was the goal.

1. Clemency Board Procedures

The Clemency Board desired to make the procedure as simple as possible, with a minimum of technical requirements with which an individual had to comply. We wanted the procedure to be open, so that the applicant would be aware of how we were proceeding with his case and what we were using as the basis for our actions. We encouraged the fullest possible participation by applicants. Above all, the Board and the staff wished to make the Presidential Clemency Board a model of fair and open administration in keeping with the Presidential nature of our responsibilities and the importance of our task. The Board's procedural and substantive rules are described in detail in Chapter 4; an overview is presented below.

In brief, our process began with a telephone call or letter from an individual inquiring about clemency. We accepted any affirmative expression of interest as a provisional application, whether oral or written, and we accepted applications made on an individual's behalf by third parties. While these were sufficient to satisfy the application deadline, we required a perfected application before we would complete action on a case[35]. Any application could be withdrawn at any time, without penalty.

When an application was received, we mailed back a full set of instructions explaining the program, the individual's rights, and information on other avenues of relief he might wish to pursue in addition to the clemency program. To make the process as unthreatening as possible, we required from the individual only the minimum amount of information necessary for us to order pertinent government records. We encouraged the applicant to send in as much additional information as he wished, and we informed him of the important factors which the Board would consider in reviewing his case. We encouraged the applicant to seek legal counseling, and we informed him of possible sources for counseling. We assured him of the confidentiality of our process.

We then began his case file and give him a case number. Preliminary questions of jurisdiction were resolved by the staff under Board guidance. The information-gathering process then began. First, the staff ordered official records and files. After they had been received, a case attorney was assigned to prepare a case summary, which would later be used as the basis of our case disposition. This case summary was the key element of the entire case-by-case approach. When the case summary had been prepared, the quality control staff reviewed it carefully for fairness and accuracy. The case was then ready for presentation to the Board, and the summary was mailed to the applicant for his comment. Because of this reliance on government files, we counted heavily on the individual's review of his summary for corrections and additions. We also wanted the individual to know the exact materials the Board would consider in reviewing his case. Finally, we used the mailing of the summary as another opportunity to encourage the applicant to send further information to us on his own behalf.

A panel consisting of three or four Board members then received copies of the applicant's case summary a few days before the actual case presentation. Each panel member read the case summary, making notes and tentative personal evaluations. When the panel acted on the applicant's case, the staff attorney who prepared the summary was present with the entire file to answer questions and make additional comments on the case. Also present were a staff scribe to keep records and a panel counsel (usually the case attorney's supervisor) to advise the case attorney and panel members on Clemency Board rules and precedents.

In deliberations, Board panels had to decide the following: first, did the applicant deserve clemency of any kind? If the answer was "yes," panel members determined the applicant's baseline or starting point for the calculation of his alternative service assignment, identifying which aggravating and mitigating factors applied in his case. (See Chapter 4.) Panel members then decided what period of alternative service, if any, he had to perform to earn his clemency. (See Chapter 5.) If he were a military applicant with combat experience, the panel considered whether to recommend him for an immediate discharge upgrade and veterans' benefits. The staff attorney, scribe, and panel counsel were present during all deliberations; Board meetings were closed to the public to ensure privacy, unless an applicant expressly waived his right to privacy. The Board granted personal appearances when necessary for a full understanding of the case.

To attain as much consistency in decisionmaking as possible, any member of the Board could refer a case for reconsideration by the Full Board. A computer-aided review of panel dispositions identified cases which the Chairman wished to be reconsidered by the full Board.

Our final disposition was sent to the President as a recommendation. He then indicated his positions on a signed warrant, which was returned to the Clemency Board so we could notify the applicant of the President's decision. The applicant had the right to ask for reconsideration within 30 days. If he did not file such a motion, he either accepted or refused the President's offer of clemency. Because the program was voluntary, a refusal left him no worse off than before he applied.

Department of Justice Procedures

The Department of Justice program was implemented by the Attorney General's directive of September 16, 1974, to all United States Attorneys.[38] In addition to instructing the U.S. Attorneys on how to calculate the length of alternative service for their eligible applicants, the Attorney General required them to follow certain procedures. Section V of his directive stated:

> "In the determination by the United States Attorney of the length of service..., an applicant shall be permitted to: (1) have counsel present; (2) present written information on his behalf; (3) make an oral presentation; and (4) have counsel make an oral presentation.
>
> An applicant shall not have access to investigatory records in the possession of the United States Attorney except as provided by 32 C.F.R. 160.32. The United States Attorney shall make his decision on the basis of all relevant information. No verbatim record of the proceeding shall be required."

Each of the ninety-four United States Attorneys was responsible for carrying out this directive. The Department of Justice took several steps to ensure uniform implementation of its program. All U.S. Attorneys were instructed to apply four specific mitigating factors. They received a model alternative service agreement and a model letter to send to eligible draft evaders. In addition, the Deputy Attorney General personally examined and reviewed the first twenty-six alternative service agreements before giving final approval.

The procedures followed by the Department of Justice were discussed by Kevin T. Maroney in his testimony before a Sub-committee of the House Committee on the Judiciary:

> "... individuals who may have been located outside the country when the President announced the program were given a 15-day opportunity to re-enter and report to United States Attorneys without fear of arrest. Morever, upon reporting to the United States Attorneys, no prospective enrollee was expected to execute an agreement immediately...." (In those instances where the individual was without financial resources, the United States Attorney assisted in making arrangements for legal representation.)
>
> "As a further demonstration of flexibility, not every prospective enrollee has been required to execute an agreement in the judicial district where he was charged. In those cases where compelling reasons were evident, such as an ensuing family or financial hardship, exceptions were made and individuals permitted to sign agreements in other geographical areas. Likewise, with respect to those individuals who were pursuing educational endeavors either in or outside the country, arrangements were made permitting them to execute agreements with the understanding that the actual performance of work would be delayed, pending the completion of their studies.[40]

Following these procedures U.S. Attorneys dropped prosecutions or discontinued investigations of eligible draft evaders in return for the satisfactory completion of a specific amount of alternative service.

Department of Defense Procedures

In response to the Presidential Proclamation, the Secretary of Defense issued a memorandum on September 17, 1974, to the Secretaries of the Military Departments.[41] This memorandum indicated that the period of alternate service for servicemen who apply under the President's program would be determined in individual cases by designees of the various Military Departments. Pursuant to this grant of authority, the Secretaries established a Joint Alternate Service Board. Each of the four military services appointed

an officer in the grade of colonel or captain to serve on the Board.

The Secretaries granted the Joint Alternate Service Board broad authority to determine procedures for the resolution of its cases, except that the Presidency of the Board had to be shared in such a way as to be held by a member of the same service as the applicant whose case was being considered. The vote of the Board President was to prevail in case of a tie.

The members of the Joint Alternate Service Board agreed upon the following procedures for the processing of its applications:

> a. To comply with the above directives, each individual participating in the President's program is offered the opportunity during his processing to submit to the Board additional documentation that he desires the Board to consider on his behalf. Conversely, he must so indicate that he does not desire to make a statement if that is his decision. This provides the individual an opportunity to state his reasons for unauthorized absence, to indicate the nature of his employment or service while absent, and to provide any other statements or matters he wishes considered by the Board.
>
> b. The military services are required to provide a summary of each individual's record to highlight service related factors to be considered....
>
> c. The total available service record, statements submitted by the individual, and the service provided summary sheet are reviewed and evaluated independently by each member of the Board. Records which contain conflicting or questionable data are returned to the service for verification of the information. Each Board member considers all available information and makes an independent judgment to determine if there is appropriate justification for reducing required alternative service below 24 months. He then records the number of months which he considers appropriate for the individual to serve. When all Board members have reviewed a case and made an independent determination of alternative service time, Board member votes are compared. In the event of a tie or split vote, the case is openly discussed by the Board members to resolve differences. In the event of a tie vote during arbitration, the President of the Board votes to break the tie. This decision on the number of months of alternative service is considered the final decision of the full Board.
>
> d. The decision is annotated on the summary sheet, signed by a Board member and returned to the applicable service for separation processing[40].

The Department of Defense program processed its applicants through the Joint Clemency Processing Center at Fort Benjamin Harrison, Indiana. In addition to being a clemency program for military deserters, the Defense program was also a discharge process. Applicants filled out a series of administrative forms and participated in group legal counseling sessions and could see a military lawyer for individual counseling. They could apply for one of three options concerning participation in the program. Option 1 made him a participant in the Clemency program, requiring him to sign a Reaffirmation of Allegiance, a Pledge of Public Service, and accept an Undesirable Discharge. Option 2 offered him an opportunity not to participate in the President's clemency program and to have his case decided under current military law. Option 3 represented a return to active duty for qualified Army applicants. Only two of the four who chose Option 3 were restored to active duty. Although not an explicit option, 46 applicants were diverted from the clemency program and immediately discharged under honorable conditions.[43] All applicants reserved the right to withdraw his selection of a particular option before their cases were forwarded to the Joint Alternate Service Board for disposition.

Those who applied for clemency could then submit a "Statement to the Board for Alternative Service." Each absentee had the opportunity to explain his reasons for absence from military service, employment during his absence, and other matters he wished the Board to consider.

Personal appearances were allowed only in exceptional circumstances. The Board felt that the availability of applicants' military records and the applicants' right to supplement their records with further information made appearances unnecessary. No opportunities for appeal were provided. Altogether, most applicants generally spent no more than three days at the Joint Clemency Processing Center.

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