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APPENDIX

THE HISTORICAL PERSPECTIVE OF CLEMENCY

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CIVIL WAR

Lincoln

Throughout the Civil War, President Lincoln was besieged with individual applications for Executive Clemency. Official War Department records (Adjutant General's Office Special Orders) are replete with Presidentially-directed pardons granted soldiers who had been convicted of desertion. Here is a sampling of individual actions taken by Lincoln during January 1864 concerning Union Army deserters:¹

- Jan 7. "This boy having served faithfully since is pardoned for the old desertion."
- Jan 12. "If David Levy shall enlist and serve faithfully for one year or until otherwise honorably discharged I will pardon him for the past."
- Jan 13. "If Henry Stork of, 5th. Pa. Cavalry has been convicted of desertion, and is not yet executed, please stay till further order & send record."
- Jan 21. ""Let the unexecuted portion of the sentence be remitted and the soldier be returned to duty with his regiment to serve his full enlistment including period of absence."
- Jan 23. "Pardon on condition of re-inlisting and faithfully serving a term."

Some deserters, knowing they were under death sentence, voluntarily appeared at the White House and placed themselves at the mercy of the President. Lincoln's practice was to telegraph a full pardon to the soldier's Commanding General with the understanding that the individual would faithfully serve out his term of enlistment.



One hundred forty one Union soldiers were executed for desertion. In a letter to Erastus Corning on 12 June 1863, Lincoln wrote:

Long experience has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. (But) Must I shoot a simple-minded soldier boy who deserts (and) not touch a hair of a wiley agitator who induces him to desert? ²

The "wily agitator" was C. L. Vallandigham, former member of the U.S. House of Representatives. Lincoln believed "The enemy behind us is more dangerous to the country than the enemy before us" and he took the unusual step of having Vallandigham exiled to the Confederacy.

Vallandigham had been placed under military arrest on 5 May 1863 and the following day a Military Commission found him guilty of declaring "disloyal sentiments and opinions" and sentenced him to be kept in confinement "during the continuance of the war".³ Lincoln altered the sentence on 19 May 1863 by directing Vallandigham be delivered to the Confederate lines.

Conscription

As a Member of Congress, Vallandigham had spoken against the war, saying it ought not to continue, "not a day, not an hour".⁴ Vallandigham vigorously fought enactment of the Conscription Bill. In an impassioned plea to his fellow Representatives he said:

Behold here a stupendous Conscription Bill for a standing Army of more than three million men, forced from their homes, their families, their fields, and their workshops; . . . This bill is a confession that the people of the country are against this war.



The Conscription Bill became law and there were four national draft calls in 1863 and 1864. But there were many ways to avoid service even if one's name were drawn. Of the 776,827 names drawn, only 46,347 entered the military. A draft call consisted of a levy in each Congressional District and if sufficient volunteers signed up to meet the quota, there would be no involuntary inductions in that District. Wards and cities often offered bounties to recruits as a means of securing enough enlistments to forestall involuntary inductions. A conscript could gain exemption from duty by paying a \$300 commutation fee, or he could simply hire a substitute to take his place.

During the Civil War the exodus to Canada and other countries grew to such proportions that the President decreed that "no citizen liable to be drafted into the militia shall be allowed to go to a foreign country". In August 1862, Secretary of War Stanton ordered that draft eligibles who left their country or state to avoid a draft call would be arrested and summarily placed on military duty. The writ of habeas corpus was suspended for these "skedaddlers". Immediately upon apprehension, they were to be placed on military duty without further formalities. They were required to bear the expenses of their arrest and conveyance to the nearest military installation. Draft evaders apprehended and placed on military duty were to have \$5 deducted from their pay and given as a reward to the officer who arrested them.⁵




A Clemency-Minded President

On December 6, 1864, in his Annual Message to Congress, Lincoln spoke of clemency:

"A year ago general pardon and amnesty, upon specified terms, were offered to all, except certain designated classes; and, it was, at the same time, made known that the excepted classes were still within contemplation of special clemency. During the year many availed themselves of the general provision, and many more would, only that the signs of bad faith in some led to such precautionary measures as rendered the practical process less easy and certain. During the same time also special pardons have been granted to individuals of the excepted classes, and no voluntary application has been denied. Thus, practically, the door has been, for a full year, open to all, except such as were not in condition to make free choice--that is, such as were in custody or under constraint. It is still so open to all. But the time may come--probably will come--when public duty shall demand that it be closed; and that, in lieu, more rigorous measures than heretofore shall be adopted." (emphasis added)

Abraham Lincoln was a clemency-minded President but the amnesties that he promised were limited in scope and conditional in nature. Lincoln's many acts of individual pardon testify to his compassionate nature. His amnesty proclamations attest not only to his desire to heal the nations wounds but also his political and military wisdom. Lincoln's first offer of pardon to Union Army deserters required that deserters must rejoin their units to benefit from the amnesty. Later in the same year (1863) Lincoln appealed to supporters of the Confederacy to abandon Jefferson Davis and swear an oath of allegiance to the United States. This entreaty to rebels to abandon their errant ways was surely an effort to weaken the Confederate forces. Confederate deserters were exempted from conscription; they also were barred from enlisting in the Union Army as recruits or as substitutes for conscripts.



During the confusion attendant to the early stages of the war, a great many persons were detained as political prisoners by the North. Some of those detained had aided the Confederacy, some had not; there were many among the first group who had second thoughts about their earlier support of the Confederacy. President Lincoln, acting through Secretary of War Stanton, issued "Executive Order No. 1, Relating to Political Prisoners" on 14 February 1862. In this Order, the President directed

that all political prisoners or state prisoners now held in military custody be released on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States.

The Order promised "To all persons who shall be so released and who shall keep their parole the President grants an amnesty for any past offenses of treason or disloyal by which they may have committed".

The Confiscation Act of 17 July 1862 contained a section authorizing the President to amnesty persons "who may have participated in the existing rebellion."⁷ Such authority, of course, was superfluous inasmuch as Lincoln already possessed such powers through the Constitution.

By Presidential Proclamation on 10 March 1863, Lincoln commanded all soldiers absent without leave to return to their military units. Absent soldiers who responded by April 1863 were promised that they would suffer no punishment other than forfeiture of pay and allowances for the period of their absence.⁸

On 8 December 1863, President Lincoln offered pardon to certain individuals who had participated in the Rebellion. Such individuals could be pardoned by subscribing to the following oath of allegiance:

I _____, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and Union of the States thereunder.....



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Lincoln specifically excluded Confederate Leaders from eligibility. The proclamation further provided that any Confederate State could be returned to the Union when subscribers to the oath equalled in number not less than 10 percent of the number of the State's voters in the 1860 Presidential election. Thus, Lincoln's Proclamation of 8 December 1863 appears to have been designed mainly as an instrument to take support away from the Confederate effort by offering conditions under which a seceded state could be restored to the Union. This proclamation was clarified on 26 March 1864 by specifying that certain persons (mainly prisoners of war) were not eligible for the amnesty offer.

Leaders of the Rebellion remained unamnestied until 1898 in the sense that the Fourteenth Amendment precluded them from holding military or civil office. Although never brought to trial, Jefferson Davis was imprisoned at Fortress Monroe from 10 May 1865 to 13 May 1867. Had it not been for the political disability imposed by the Fourteenth Amendment to the Constitution, Jefferson Davis most certainly could have served as a Senator from Mississippi after the Civil War. But it would have been necessary for him to seek a Presidential Pardon and he apparently was unwilling to public repent and take the necessary oath of allegiance. Davis was still barred from holding office at the time of his death in 1889.

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Lincoln had been in the habit of responding favorably to requests for leniency in the cases of deserters under death sentence. He finally caused War Department General Orders No. 76 to be issued 26 February 1864 providing

... the sentences of all deserters who have been condemned by court-martial to death, and that have not been otherwise acted upon by him, be mitigated to imprisonment during the war...¹⁰

Provision was made for restoration to duty of deserters who commanding generals determined would be of service to the Army.

Lincoln's second--and last--offer of amnesty for Union Army deserters was contained in his Presidential Proclamation of 11 March 1865. Deserters were required to return to duty within sixty days and to serve a period of time equal to their original enlistment. This Proclamation was not the result of Presidential initiative; it was a response to an act of Congress (3 March 1865) requiring the President to issue a proclamation extending an offer of pardon to deserters. Congress took notice of draft evaders as well as deserters and acknowledged that some persons left the United States to avoid the draft:

...all persons who, being duly enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States with intent to avoid any draft into the military or naval service, duly ordered, shall be liable to the penalties of this Section.¹¹

Deserters not responding affirmatively to the Proclamation were deemed to have "voluntarily relinquished and forfeited their rights of citizenship".¹²

The War Department Provost-Marshall-General's Office reported on 11 September 1865 that only 1,755 deserters surrendered themselves under this Proclamation.¹³



Johnson

Approximately five months after being elected Vice President, Andrew Johnson was sworn in as President succeeding the assassinated Lincoln. A few days after assuming the Presidency, Andrew Johnson wrote his Attorney-General (Speed) for guidance concerning Presidential powers of pardon and amnesty. The detailed response of the Attorney-General is found in The War of the Rebellion, Series III, Vol. V., (Washington: GPO, 1907):

ATTORNEY-GENERAL'S OFFICE,
May 8, 1865.

The PRESIDENT:

* * *

The power of exercising and extending mercy resides in some department of every well-ordered government. When order and peace reign its exercise is frequent and its influence valuable. Its influence is of value inestimable at the termination of an insurrection so widespread as the one which in our country is just being suppressed. Its appropriate office is to soothe and heal, not to keep alive or to initiate the rebellious and malignant passions that induced, precipitated, and sustained the insurrection. This power to soothe and heal is appropriately vested in the Executive Department of the Government, whose duty it is to recognize and declare the existence of an insurrection, to suppress it by force, and to proclaim its suppression.

* * *

When men have offended against the law their appeal is for mercy, not for justice. In this country and under this Government violators of the law have offended against a law of their own making; out of their own mouths they are condemned—convicted by their own judgments—and, under a law of their own making, they cannot appear before the seat of mercy and arrogantly claim the fulfillment of a promise of pardon they have refused and defied.

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 in government, harm may come of their improvident use, and perils which seem past may be renewed, and other and new dangers be precipitated. By a too extended, thoughtless, or unwise kindness the man or the government may warm into life an adder that will requite that kindness by a fatal sting from a poisonous fang.



* * *

Society in the rebel States has not been and is not now in a normal condition, nor in harmony with the principles of our Government. That society has rebelled against them, and made war upon the principles and powers of our Government. In so doing it has offended, and stands a convicted culprit. Mercy must be largely extended. Some of the great leaders and offenders only must be made to feel the extreme rigor of the law—not in a spirit of revenge, but to put the seal of infamy upon their conduct. But the mercy extended to the great mass of the misguided people can and should be so used as to reorganize society upon a loyal and freedom-loving basis. It is manifestly for their good, and the good of mankind, that this should be done. The power of pardon and mercy is adequate to this end. Such conditions, precedent and subsequent, can legally and properly be appended as will root out the spirit of rebellion and bring society in those States into perfect accord with the wise and thoroughly tried principle of our Government.

If this power of pardon is wisely used, peace will be established upon a sure and permanent basis.

* * *

JAMES SPEED,
Attorney-General.

On

29 May 1865, just six weeks after becoming President, Johnson issued an amnesty proclamation directed toward those who had supported the Confederacy. In his Proclamation, Johnson stated the purpose of his grant of amnesty and pardon to be "in order that the authority of the government of the United States may be restored, and that peace, order and freedom may be established".¹⁴

Of the fourteen classes of persons excluded from the grant of amnesty,

two are of special interest:

...all persons who have been or are absentees from the United States for the purpose of aiding the rebellion.

...all persons who have voluntarily participated in said rebellion and the estimated value of whose taxable property is over \$20,000.¹⁵

Of these two excluded classes, the first was aimed primarily at draft-evaders who had fled to Canada. The second arises from Johnson's belief the Civil War was of economic origin provoked by rich slave-owners.

Johnson's amnesty proclamations for rebels followed the policy set by his

Individuals in the excepted classes were eligible to make application for pardon to the President; the Proclamation promising "clemency will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States."

Although the Civil War ended in the Spring of 1866, it was 7 September 1867 before Johnson announced a further amnesty for Confederates. As in his May 1865 Proclamation the taking of an oath was a precondition to receiving amnesty. While Johnson's first amnesty had fourteen classes of persons excepted from eligibility, few were excluded under the 1867 proclamation. Principal exclusions were high officials of the Confederacy, persons in confinement or on bail, and individuals involved in the assassination of Lincoln.

The Proclamation contained wording strongly supportive of a need for clemency:

Whereas a retaliatory or vindictive policy---could only tend to hinder reconciliation...and
Whereas...full and beneficent pardon...should be opened
the further extended to a large number of the persons
who....have been hitherto excluded from Executive clemency... 16

Shortly after his impeachment trial was concluded, Johnson discussed a further amnesty with his cabinet. The idea of a universal amnesty for all rebels was seriously considered but finally rejected. Jefferson Davis and others indicted for treason or felony were excluded from the amnesty announced 4 July 1868.

A political motive can be perceived in this amnesty, since it was issued on the opening day of the Democratic National Convention. However, southerners apparently resented that the amnesty was not universal, and Johnson failed to receive the Democratic nomination. 17

The Independence Day 1868 Proclamation provided:

...Whereas it is believed that amnesty and pardon will tend to secure a complete and universal establishment and prevalence of municipal law and order in conformity with the Constitution of the United States, and to remove all appearances or presumptions of a retaliatory or vindictive policy.....hereby proclaim and declare, unconditionally and without reservation, to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion, excepting such person or persons as may be under presentment or indictment in any court of the United States having...

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Jefferson Davis had earlier been released from prison but, being under indictment, he could not benefit from the 4 July 1868 amnesty. His trial had been postponed because of the impeachment proceedings against President Johnson. Johnson, nearing the end of his term, issued a universal and unconditional amnesty on Christmas Day 1868, thus setting the stage for dismissal of the indictment against the former President of the Confederacy.

This fourth and final rebel amnesty by Johnson extended

.....to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion a full pardon and amnesty for the offense of treason against the United States or of adhering to their enemies during the late Civil War.....

Congress Attempts to curtail Presidential Power to Amnesty

In January, 1867 Congress enacted a measure intended to deprive President Johnson of his power to proclaim general amnesty. Congress had appointed a Joint Committee on Reconstruction in December 1865 and most of the testimony received by the Committee indicated that Johnson's clement attitude toward secessionists--an attitude expressed by his amnesty proclamation and his liberal grant of pardons--was impolitic. Johnson's opponents in Congress had been refusing to seat senators and representatives from the former Confederate States. The Joint Committee was of a same mind. The Committee held that only Congress could restore political rights and that the Confederate States were not entitled to representation in Congress.


The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement and

Section Three to the Fourteenth Amendment to the Constitution (proposed 13 June 1866, ratification completed 9 July 1868) specifically invalidated any restoration of political rights by political pardon. Instead, it provided that the political disability imposed by Section Three could be removed only by a two-thirds vote in each House. Congressional action had removed the disability for 4,616 individuals by 4 March 1871. By subsequent Congressional action, the disability was removed for certain persons in 1872 and, in 1898 the disability imposed by Section Three was removed for all surviving Confederates.²¹

A conflict existed between Section Three of the Fourteenth Amendment and Section Thirteen of the Confiscation Act of 1862, inasmuch as the Confiscation Act provided

The President is hereby authorized at any time hereafter, by proclamation to extend to any persons who may have participated in the existing rebellion in any state or part thereof, pardon and amnesty....

Superimposed over this conflict was the already established Constitutional right of the President to grant pardons. Yet Congress displayed a clear intention to curtail the President's pardoning power and, perhaps less clearly, to reserve unto itself the power to grant amnesty.



Congress repealed Section Thirteen of the Confiscation Act in January 1867, Senator Trumbull of Illinois apparently having persuaded his colleagues that the Section unwisely broadened the powers of the President by authorizing the President to grant pardon and amnesty by proclamation. In Trumbull's judgment, the Constitution conferred on the President the right to grant individual pardons only; any power to issue amnesty proclamations would have to be bestowed upon the President by Congressional action. Senator Johnson of Maryland led the unsuccessful opposition to the legislative proposal; he argued the power to grant amnesty by proclamation belonged to the President by heritage as well as by Constitutional right.²²

President Johnson vetoed the legislation repealing the amnesty powers set out in the Confiscation Act, but Congress overrode his veto. Congress thus set the stage for one of the grounds of impeachment--the President's abuse of the pardoning power.

In 1866 the Supreme Court (Ex parte Garland) declared that the "power of the President is not subject to legislative control....Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders." Neither the Fourteenth Amendment nor the report of the Joint Committee had deterred Johnson from his policy of issuing pardons generously.



He advised the Senate on 18 January 1869

The resolution adopted (5 December 1868) requesting the President "to transmit to the Senate a copy of any proclamation of amnesty made by him since the last adjournment of Congress, and also to communicate to the Senate by what authority of law the same was made," has been received.

I accordingly transmit herewith a copy of a proclamation dated the 24 day of December last. The authority of law by which it was made is set forth in the proclamation itself, which expressly affirms that it was issued "by virtue of the power and authority in vested by the Constitution, and in the name of the sovereign people of the United States," and proclaims and declares "unconditionally and without reservation, to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion, a full pardon and amnesty...."

The Federal Constitution is understood to be and is regarded by the Executive as the supreme law of the land. The second section of article second of that instrument provides that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." The proclamation of the 25th ultimo is in strict accordance with the judicial expositions of the authority thus conferred upon the Executive....²³



Union Army Deserters

With the ending of the war, great numbers of Union Army soldiers headed home without waiting for official release from service. President Johnson (on 3 July 1866) promised pardon without punishment except forfeiture of pay for deserters who return to duty by 15 August 1866. The Adjutant-Generals Office reported on 20 October 1866 that "three hundred and fourteen availed themselves of this act of clemency." ²⁴

In a report to the Secretary of War in March 1866, the Provost-Marshal-General spoke against leniency toward deserters:

...The want of adequate means for the arrest of deserters in the early part of the war, and the consequent impunity with which they returned to and remained at their homes, and the failure to administer prompt and adequate punishment for the worst phases of the crime, when occasion offered, contributed more, perhaps, than anything else to the evil of desertion.

....Lives sacrificed, battles lost, and war prolonged, in consequence of the depletion of the ranks of the armies by desertion, were the natural fruits of the want of rigor in dealing with this evil in the early stages of the war. Undue mercy to deserters was in reality harsh cruelty to those who remained true to their flag.²⁵

The Provost-Marshal-General's September 1869 report stated "two hundred and sixty thousand three hundred and thirty-nine men have been reported to this office as deserters from the Army". General Fray, the Provost-Marshal-General, further reported that "seventy-six thousand two hundred and fifty-three deserters have been arrested by this Bureau." Not included in the above figures, but nevertheless deserters under the law, were 161,286 conscripts who failed to report. General Fry estimated that 25 - 30% of these individual reported as deserters should not have been so recorded, thus making "the total number of deserters still at large 230,148." ²⁶

The Deserters Branch of the Provost-Marshal-General's Bureau reported "In 1863 the monthly desertions averaged 4,647; in 1864 they averaged 7,333; in 1865 they averaged 4,368." ²⁷

Confederate Deserters

Just as the United States put forth calls for Union Army deserters to return to duty, the Confederacy also appealed to its absent soldiers to come back to military control.


On 11 August 1863 a general pardon was offered to AWOL Confederate soldiers provided they returned to their duty posts within twenty days. The General Orders promulgating the offer of pardon also provided that "all men who have been accused or convicted, and undergoing sentence for absence without leave or desertion, excepting those who have been twice convicted of desertion, will be returned to their respective commands for duty."²⁸

According to Robert E. Lee, the 11 August pardon had just the opposite effect on the Confederate soldier from that for which it was designed. General Lee wrote President Jefferson Davis that many soldiers were enticed to desert by the amnesty:

Immediately on the publication of the amnesty, which I thought would be beneficial in its effects, many presumed on it, and absented themselves from their commands, choosing to place on it a wrong interpretation.I would now respectfully submit to your rexcellency the opinion that all has been done which forbearance and mercy call for, and that nothing will remedy this great evil which so much endangers our cause excepting the rigid enforcement of the death penalty in future in cases of conviction.²⁹

Lee complained about leniency toward deserters again in a 30 October 1863 to the Secretary of War:

... a number of men were pardoned, and the consequence was a recurrence of desertion to a most alarming extent. A return to a sterner discipline was found to be absolutely necessary..... I fear that pardons, unless for the best of reasons, will not only make all the blood that has been shed for the maintenance of discipline useless, but will result in the painful necessity of shedding a great deal more....It must be remembered that the punishment of death for desertion is inflicted almost exclusively for the warning of others....³⁰



Your proposition to issue a proclamation, calling all deserters and other absentees to return to their proper commands, on the ground of pardon, if they do so within a certain time, is approved.... It will be well to warn all soldiers that this is the last interposition by an amnesty for deserters; but the pardoning power, as used, is rather a revisory than a pardoning function. 31

...By authority of the President of the Confederate States, a pardon is announced to such deserters and men improperly absent as shall return to the commands to which they belong within the shortest possible time, not exceeding twenty days from the publication of this order, at the headquarters of the department in which they may be.

By the same authority it is also declared that no general amnesty will again be granted, and those who refuse to accept the pardon now offered, or who shall hereafter desert or absent themselves without leave, shall suffer such punishment as the courts may impose, and no application for clemency will be entertained. 32

Was that 100% dependent back then? . . . 22



General Robert E. Lee

In 1970 an oath of amnesty executed by General Robert E. Lee in 1865 was belatedly uncovered. Following this discovery (some contend the oath was never lost and was on public display years ago) an effort to restore full citizenship rights to General Lee received much public attention.

President Andrew Johnson had issued an amnesty proclamation shortly after assuming the Presidency but Lee remained outside the pale of the amnesty inasmuch as he fell within several of the fourteen classes of persons who were excepted from Johnson's proclamation. However, the amnesty provided that such persons as were in the excluded classes could seek Presidential clemency and it was apparently with this thought in mind that Lee took the oath of allegiance. Johnson issued several subsequent amnesties but Section three of the Fourteenth Amendment to the Constitution continued to bar Lee from eligibility for State or Federal office.

The Virginia Congressional delegation approached President Nixon with a request that a Presidential pardon be issued to Lee. However, in 1898 when President McKinley signed into law the legislation removing the disability under Section three of the Fourteenth Amendment, the removal did not apply to deceased individuals (Lee died in 1870).

Upon failure to secure a posthumous pardon for Lee from President Nixon, Resolutions calling for restoration of the full rights of citizenship to Lee were then presented in both the Senate and the House. The legislation was passed unanimously in the Senate and by a vote of 407 to 10 in the House. Votes against the measure were generally votes of protest at the seeming reluctance of the House to issue a Congressional amnesty for Vietnam-era dissenters.

A House member voting against the Resolution stated his opposition was "because it is morally wrong to restore the rights of one man who has been dead for a century while we continue to deny these same rights to thousands of young Americans now living."³⁴ Another opponent of the Lee legislation said:

It is now proposed that we honor General Lee for following his conscience. Should we do not the same for the thousands of living Americans who followed their conscience (in opposing U.S. involvement in Vietnam) and whose actions have been vindicated by events?"³⁵

President Ford signed the measure in a public ceremony at the Custis-Lee Mansion with descendants of General Lee in attendance.



Grant

President Ulysses S. Grant is generally overlooked in treatises on Presidential amnesties, clemencies, and pardons for war-related offenses. Yet Grant extended pardon to Union Army deserters and he also leniency toward Confederate leaders. Grant's offer of pardon to deserters was extended by War Department General Orders No. 102 issued 10 October 1873:

The President of the United States commands it to be made known that all soldiers who have deserted their colors, and who shall on or before the 1st day of January, 1874, surrender themselves at any military station, shall receive a full pardon, only forfeiting the pay and allowances due them at the time of desertion, and shall be restored to duty without trial or punishment on condition that they faithfully serve through the term of their the term of their enlistment.³⁶

Grant also demonstrated a clement attitude toward Confederate leaders. He lobbied for removal of the disability imposed on them by the Fourteenth Amendment. Section 3 of the Amendment read:

"No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability."

In his Third Annual Message to Congress (4 December 1871), Grant reminded the Senators and Representatives that:

More than six years having elapsed since the last hostile gun was fired between the armies then arrayed against each other...it may well be considered whether it is not now time that the disabilities imposed by the fourteenth amendment should be removed.³⁷



Congress responded in the Spring of 1872 by removing the political disabilities imposed by Section 3 of the Fourteenth Article of Amendment from all persons "except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses and officers in the judicial, military, and naval service of the United States, heads of Departments, and foreign ministers of the United States".³⁸

Grant's opponent in the Presidential election of 1872 was Horace Greeley, an advocate of unconditional amnesty for former Confederates.³⁹ Prior to receiving the Democratic nomination for the Presidency, Greeley had been put forth as the candidate of the Liberal Republicans. The Liberal Republican party platform called for "immediate and absolute removal of all disabilities imposed on account of the Rebellion...believing that universal amnesty will result in complete pacification in all sections of the country."⁴⁰

Grant's Fifth Annual Message to Congress contained a further plea for clemency toward those who had provided leadership to the Confederacy:

I renew my previous recommendation to Congress for general amnesty. The number engaged in the late rebellion yet laboring under disabilities is very small, but enough to keep up a constant irritation. No possible danger can accrue to the government by restoring them to eligibility to hold office.⁴¹

The Congress failed to favor Grant's request and it was not until June 1898 when President McKinley signed the final amnesty bill for Confederates.

NOTES

Appendix

Chapter III, Civil War

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NOTES (Contd)

Appendix

Chapter III, Civil War

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35. Abzug, Bella (Rep. from NY). Quoted in Congressional Record, 22 July 1975, p. H7191.
36. Richardson, Vol. VII.
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38. Ibid.
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40. Commager
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APPENDIX _____

THE HISTORICAL PERSPECTIVE OF CLEMENCY

CHAPTER IV. Twentieth Century Amnesties

- A. T. Roosevelt
- B. Coolidge
- C. Franklin D. Roosevelt
- D. Truman
 - 1. 1945 Proclamation
 - 2. Amnesty Board
 - 3. 1952 Proclamations

-1-
TWENTIETH CENTURY AMNESTIES

T. Roosevelt

President Theodore Roosevelt issued a proclamation of general amnesty and pardon 4 July 1902 that was unique in many respects.

It dealt with the inhabitants of the Philippine Archipelago, a territory ceded to the United States at the close of the Spanish-American War.¹

Emilio Aguinaldo, a Filipino leader who had fought Spanish rule, urged his fellow Islanders to side with the Americans in the course of the Spanish-American War. Proclaiming himself head of a revolutionary government, Aguinaldo wrested control of the Philippines, except for Manila, from the Spanish. Following Dewey's successes and the American occupation of Manila, the Philippine Insurgents turned to resisting the Americans.

Quelling the Philippine Insurrection proved a formidable task; US forces committed to the Islands eventually reached a high of 70,000. But by 23 November 1899, General Arthur MacArthur was able to say

The so-called Filipino Republic is destroyed. The congress is dissolved. The President (Aguinaldo) of the so-called republic is a fugitive....²

MacArthur queried his superiors "...how would it do to issue a proclamation at an early date, offering complete amnesty to all who surrender within a stated time...." His suggestion, if adopted, might have precluded the next phase of the Insurrection, a turn from organized resistance to guerrilla warfare. Unfortunately,



MacArthur became military governor of the Islands in May 1900, and on 21 June he offered amnesty to those who would renounce Filipino aspiration for nationality and accept American sovereignty.³ To take advantage of the offer, individuals were required to surrender within 90 days and take an oath of allegiance. Approximately 5,000 accepted MacArthur's offer.

The guerrilla phase of the Insurrection tied down a high percentage of the US Army until Aguinaldo was finally captured in March 1901. Aguinaldo took the oath of allegiance on 2 April and on the 19th of the same month he urged his compatriots to accept American rule.⁴ His appeal to Filipinos to accept American sovereignty brought the surrender of 1,500 Insurgents in the first five days and by September over 4,000 had surrendered.⁵ One Insurgent who did not surrender was Manuel L. Quezon, who was later captured and imprisoned for six months. Quezon's determination to see the Philippine s gain independence never waned; and years later he became the first President of the Philippine Commonwealth.

In a most extraordinary action, Roosevelt's 4 July 1902 Proclamation covered acts committed during a period (August 1896 - December 1898) when the Filipinos were under the domination of the Kingdom of Spain. In addition to granting amnesty for acts committed during the Insurrection against Spain, Roosevelt

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also amnestied Filipinos for insurrectionary acts committed after the American occupation.

Roosevelt's Proclamation was neither universal nor unconditional. Excluded from the proclamation were crimes committed subsequent to May 1902 in islands then under civil government. No amnesty was granted to persons previously convicted of murder, rape, arson or robbery. However, persons in exempted classes could make special application for clemency.

To benefit from the amnesty and pardon, individuals were required to take an oath acknowledging the "supreme authority of the United States of America in the Philippine Islands".



President Coolidge

On 15 December 1923 President Coolidge pardoned all Federal prisoners who had been convicted under the Espionage Act of opposing the government and the Selective Service during World War One. The pardons were rooted in recommendations submitted to the President by a committee appointed by President Harding before his death in August 1923. The committee, composed of ex-Secretary of War Baker, Bishop Brent, and General Harbord, was formed after President Harding had been subjected to political pressure to release the prisoners. According to contemporary newspaper accounts, General Harbord was opposed to the Presidential pardoning.

Eight of those pardoned by Coolidge had refused an earlier offer of pardon by President Harding a year earlier because of the conditional nature of the pardon offered. At Christmas-time ^{IN} 1921, Harding had commuted the term of Socialist Eugene Debs after Debs had served less than three years of a ten year sentence imposed for violating the Sedition Act of 1918. Debs, a perennial presidential candidate, had garnered nearly a million votes in the 1920 election even though then imprisoned.

The Coolidge decision, which affected only 31 prisoners, was announced after Presidential consultation with the Attorney General.⁶ Senators Pepper and Borah and the American Civil Liberties Union had led the pro-amnesty faction in this battle.⁷ Unaffected by Coolidge's decision was N. S. Sogg, a Mexican serving a ten year prison sentence for having aided an American to escape the World War One draft.

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Franklin D. Roosevelt

In a 23 December 1933 Proclamation affecting only those who had ^{completed} prison terms for violating the Draft or Espionage Acts, President Franklin D. Roosevelt restored civil rights to about 1,500 war-resisters.⁸ There was no commutation of prison sentence as all affected by Roosevelt's "Christmas Amnesty Proclamation" had already completed their sentence. In discussing the intent and effect of his Proclamation, Roosevelt noted that "fifteen years have elapsed since the end of the war" and the individuals affected by the Proclamation "have paid the penalty that the law imposed on them".

Roosevelt's Proclamation provided no relief for those who had fled the country to avoid prosecution. The Proclamation had an unusual effect on the family of Mrs. Emma C. Bergdoll of Pennsylvania. Restoration of citizenship was provided for her son Erwin, who served a four year prison sentence for draft evasion. However, another son, Grover, remained un-amnestied since he had fled from the United States to avoid the draft.



President Truman

Between 1945 and 1952, President Truman issued four Proclamations granting Executive clemency to certain classes of individuals. One of the Proclamations dealt with WW II Selective Service violators, another dealt with peace-time deserters; Truman's other two Proclamations restored civil rights to war supporters, not war resisters.

1945 Proclamation

Truman's 1945 Christmas Eve Proclamation benefited several thousand former convicts. Truman acted on the recommendation of his Attorney General with Madison's pardoning of LaFitte's pirates was cited as a precedent.

The White House

pointed out

The men who will obtain the benefits of the proclamation are men who are now at liberty and whose honorable record in the armed services would seem to demonstrate their fitness to be restored to a respected place in society.⁹

The Presidential Proclamation restored citizenship rights to ex-convicts who had served at least one year in the military after 28 July 1941 and were subsequently awarded honorable discharges. Included in this amnesty were over 2,000 Federal prisoners who had been paroled for induction into the Army during World War II. In the statement accompanying the Proclamation, the White House said the clemency was "for the benefit of those ex-prisoners whose meritorious service in the Armed Forces has earned them a Presidential pardon for the offenses of which they were previously convicted". Thus, Truman's use of Presidential power of Executive



time of war. Truman stipulated that persons who had violated the laws for the government of the Army and Navy were not eligible for pardon. Conscientious objectors and persons standing convicted of violating the Selective Service laws were excluded from the benefits of the 1945 Proclamation.

Amnesty Board

An Amnesty Board was created by Truman by Executive Order No. 91814 on 23 December 1946. The Board was tasked to review the convictions of persons sentenced for violations of the Selective Service Act, and to report to the Attorney General whether Executive clemency should be granted or denied.

After hearing arguments from pro-amnesty factions and anti-amnesty factions, the Board determined that there should be no grant of clemency to classes of offenders but that a case-by-case review should be conducted and individual pardon recommended where appropriate. There was no admission that resisters were right and the government was wrong.

Of the 15,805 violators whose cases were brought to the attention of the Board, about 1,200 were in prison in January 1946 when the Board began its work. In December 1946 when the Board submitted its report there were 626 in custody; 550 of that number had been committed subsequent to the creation of the Board.


The Amnesty Board offered individual pardon to religious conscientious objectors, to evaders who subsequently served honorably in the military, to Japanese Nisei, and to persons whose violations were due to ignorance.

The Nisei were American citizens of Japanese ancestry who had been removed from their homes along the coast and placed in war relocation centers upon the outbreak of hostilities. The Board found that "Prior to their removal from their homes, they had been law-abiding and loyal citizens ... (who) deeply resented classification as undesirables."

Probably the most controversial action of the Board was its denial of blanket religious conscientious objector status to Jehovah's Witnesses. The Board declined to recommend clemency for those who witnessed only in their "spare or non-working time".

In refusing to recommend clemency for persons having a prior criminal record of one or more serious offenses, the Board noted "The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases." The Board recommended Executive clemency for 1,523 individuals. Truman accepted the Board recommendations and granted a pardon to each of the 1,523 on 23 December 1947. Approximately 1,518 others either had received or would become eligible for pardon by virtue of their qualification under Truman's December 1945 amnesty. The 15,805 convictions under the Selective Service Act that were considered by the Board were categorized as follows:

Willful Violators (Non-	approximately 10,000
conscientious Objectors)	
Jehovah's Witnesses	approximately 4,300
Conscientious Objectors	approximately 1,000
Other Types of Violators	approximately 500



Of the 15,805, there were 3,041 potential recipients of Executive clemency:

Recommended by the Amnesty Board	1,523
Previously pardoned (Dec 1945 Proclamation)	approximately 618
Entered Armed Forces and may receive pardon	approximately 900

A partial remission of prison sentences was involved in only three cases; the remaining 1,520 pardoned had already completed their terms.¹¹ The paucity of pardons recommended by the Amnesty Board was favorably commented on in a New York Times editorial:

It stated a principle that is fundamental in a democracy, where the majority rules with due regard for the rights of a minority, when it decided that it would not recommend restoration of civil rights to those persons who "thus have set themselves up as wiser and more competent than society to determine their duty to come to the defense of the nation."¹²

Not all were in agreement with the Times. On the same day the editorial appeared (Christmas Day, 1947) pickets wearing convict costumes marched around the White House protesting the limited amnesty and clamoring for¹² amnesty for all conscientious objectors.

400 citizens of Wichita, Kansas petitioned President Truman to grant a general amnesty in 1947. They called President Truman's attention to a statement he had made in a 1946 address to a Conference of the Federal Council of Churches: "Now that we have preserved our freedom of conscience¹⁴ and religion, let us make full use of that freedom." The petitioners

urged Truman to put his words into action by releasing some 300 persons still imprisoned as a result of court-martial or for having been convicted of violating the Selective Service Laws. In requesting an amnesty be granted, the petitioners pointed out:

A general amnesty for violators of the Selective Training and Service Act of 1940 and war objectors court-martialed by the armed forces is the only possible way to free the men for whom we are concerned and to restore full civil rights to them and to the thousands already released. Continued punishment of these men violates our tradition of freedom of conscience and endangers the civil liberties of all citizens.¹⁵

Senator Capper presented the petition to the United States Senate and it was referred to the Armed Services Committee. However, the clemency issue was not acted on again until 1952.

1952 Proclamations

Two of President Truman's proclamations of pardon and amnesty were issued in the midst of the Korean War. They were reported to have been proposed by the Defense Department.¹⁶ On 24 December 1952 as he began to prepare to vacate the White House and return to private life, President Truman restored civil rights to all persons convicted of having deserted between 15 August 1945 and 25 June 1950. No pardon, remission, or mitigation of sentence was involved; the sole effect of Truman's action was to restore citizenship to an estimated 8,940 peace-time deserters.¹⁷

Truman's 1952 Christmas Message also contained the announcement of his decision to restore civil rights to Korean War veterans who had been convicted in civil courts prior to their military service. The Truman Proclamation on behalf of ex-convicts is seen to be related to the McCarran Immigration Act which became effective on the day the Proclamation

was issued. Without this restoration of citizenship, naturalized veterans having criminal records might have been deported. In wartime, no President could permit the deportations of soldiers who had fought in the war.

There were no further Executive clemencies for war-related offenses until President Ford's Proclamation of September 1974.



NOTES

Appendix

Chapter IV Twentieth Century Amnesties

1. Principal source documents in addition to Sexton were Philippine Campaigns by Uldarico S. Baclagon (Manila: Graphic House, 1952) and American Imperialism and the Philippine Insurrection (Henry F. Graff, ed., Boston: Little, Brown and Company, 1969).
2. Sexton, William T. Soldiers In The Sun. Harrisburgh, Pa: The Military Service Publishing Company, 1939.
3. Congressional Record, 56th Congress, 2d Session.
4. Morison, Samuel Eliot. The Oxford History of the American People. New York: Oxford University Press, 1965.
5. Sexton
6. "Coolidge Releases All War Offenders as Christmas Gift", New York Times, 16 December 1923.
7. Preston, William Jr. Aliens and Dissenters. Cambridge, Mass: Harvard University Press, 1963.
8. "Roosevelt Proclamation Restores to Citizenship 1,500 Wartime Violators", New York Times, 25 December 1933.
9. "Truman Pardons Ex-Convicts Who Served with Merit in War", New York Times, 25 December 1945.
10. Leviero, Anthony. "President Grants Pardons to 1,523 Who Escape Draft," New York Times, 24 December 1947.
11. Ibid.
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13. Newsweek, 5 January 1948.
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The Australian Clemency Program

Because the issues of Vietnam and conscription affected Australia much like they did the United States, it is appropriate to consider the steps taken by the Australian government to "bind the nation's wounds" following disengagement of their military forces from Vietnam. Australia's release of jailed draft resisters, cancellation of indictments against National Service Act Violators, and the refusal to prosecute AWOL servicemen constituted acts of clemency similar to the actions taken by President Ford in 1974. Prime Minister Gough Whitlam's clemency program helped to promote reconciliation amongst a people who, like our town, had been deeply divided over the issues of Vietnam and conscription.

In 1964, conscription for unrestricted overseas service was adopted for the first time in Australian history. Its lottery system permitted 20-year-old voteless youths to be involuntarily inducted and assigned to military expeditionary forces. Full time service could be avoided by enlistment in the Citizens Military Force. Not long after the renewal of conscription, troop commitments were made to Vietnam. By 1968, nearly half of the Australian soldiers serving in Vietnam were draftees. Approximately 100,000 Australian males attained age 20 each year and from this group about 10,000 were selected annually by lottery for call-up.

Protests against Vietnam and conscription were of a nature entirely familiar in the United States: street demonstrations, peace vigils, draft card burnings, "selective" conscientious objection--the whole gamut of protest against war and involuntary military service. In the midst of all this, Australian fought side by side with our troops in Vietnam, acquitting themselves with valor and distinction. The Australian troop commitment to Vietnam reached a high of 8,000 men; as a proportion of national population this was the equivalent of our sending 100,000 troops to Vietnam. It constituted the largest Australian force dispatched overseas since World War II.

As public support shifted away from Australia's military role in Vietnam, dissatisfaction with conscription became more pronounced. Vietnam and conscription became dominant political issues, spurred by a lowering of the voting age from 21 to 18. The Australian Labor (ALP) Party/pledged withdrawal from Vietnam and stated that conscripts would be brought home immediately should its party come into power. This position was subsequently modified ^{when} the ALP came out in favor of conscription for overseas service, but only in time of declared war.

National elections on 5 December 1972 put the Australian Labor Party in power for the first time in twenty-three years. Vietnam and especially conscription had been contentious issues in the 1972 election and weighed heavily on many a voter's mind as he cast his ballot.

When Labor leader Gough Whitlam became Prime Minister on 8 December 1972, he acted immediately to end induction and grant unconditional clemency to draft resisters and deserters. Throughout the Australian draft, over 2% of all eligible men failed to register as required by law. However, by late 1972 no one had yet been convicted of that offense. And only 185 faced charges of failing to register. Six persons had been convicted of failing to report for induction, each receiving an eighteen month prison term. An additional 69 faced similar charges.

Prime Minister Whitlam, upon assuming office, immediately announced:

1. The cancellation of the previously announced call-up of 2,200 for involuntary military service.
2. The cancellation of National Service medical examinations.
3. The suspension of any further call-ups for involuntary service.
4. The revocation of all prior approvals for prosecution of offenses against the National Service Act.
5. The release of draft resisters who had been jailed for refusal to submit to military service.
6. A guarantee that conscripts who were AWOL would receive administrative discharges in absentia with no loss of civil rights.

Whitlam also decreed that draftees not desiring to complete their national service were free to leave the military. Conscripts choosing to shed their uniforms were placed on leave pending discharge in absentia. In addition, those individuals who were serving in the Citizens Military



Force as an alternative to full time National Service were offered the opportunity to resign.

At the time of the decree, Australian Army strength stood at 41,517, of which 11,843 were of the National Service. As a result of the opportunity to resign from the Army, the number of National Service personnel declined by 76% to 2,798 by the end of March 1973, lowering the total active duty Army strength to 33,501. Special compensation was offered as an inducement to draftees to stay in the Army, and their tours of service were reduced from 24 to 18 months.

Within ten days of assuming office, Whitlam also ordered the last Australian troops withdrawn from Vietnam.

The principal source documents for this monograph are

Books:

Alexander, Fred. Australia Since Federation. Melbourne: Thomas Nelson (Australia) Limited, 1967.

Albinski, Henry S. Politics and Foreign Policy in Australia. Durham, NC: Duke University Press, 1970.

Firkins, Peter. The Austaalians in Nine Wars. Adelaide: Rigby Limited, 1971.

Millar, Thomas Bruce. Australia's Defence. Melbourne: Melbourne University Press, 1989.

Newspapers & Periodicals:

Official Transcripts of Parliamentary Proceedings (1972-73)

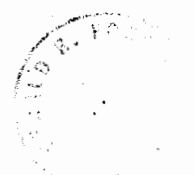
Australian Outlook

Australian Army Journal

AMEX

New York Times

This monograph was reviewed by the Australian Defence Attache to the US and his ~~prink~~ principal comments incorporated therein.



Appendix C

APPENDIX _____: DATA ON PCB APPLICANT

Data

In order to collect adequate data on the PCB applicants, a sample was constructed of 1481 cases reviewed and disposed of by the Board. The selection process was not completely random, however, since the number of civilians and the types of military discharges were known from a complete survey. Approximately 11.5% of all PCB applicants were civilians and 88.5% were former military personnel. Of the military personnel, 55.9% were discharged as undesirable (UD) (49.5% of all applicants); 42.1% were discharged for bad conduct (BCD) (37.3% of all applicants); and 1.9 were discharged under the dishonorable classification (DD) (1.7% of all PCB applicants .) The sample consisted of 472 civilians cases and 1009 military cases - thus allowing an adequate sample of civilian and making our military data more reliable. However, the military cases could not be accurately controlled to fit the known discharge percentiles since only cases which had been disposed could be used and since random selectivity of the smaller, disposed universe varied in accordance with early applications.

The data was prepared for analysis in the Statistical Package for the Social Sciences program. Because the data collection was performed by a group of people whose specialities were legal and not demographic, we had an error rate of 3.2%.

We had to rely on case summaries for our data. While we could rely on them as accurate reflections of the case files (given our Quality control procedures) this did raise three methodological problems:

(1) Official records's were not always prepared in the same manner, (2) Much of the Data did not come directly from the applicant, but from a third party. (3) the information



included in case summaries was not included for the purpose of statistical analysis, but simply had to be relevant to the Board's Baseline formula and Factors.

Of course, relying on case summaries did have one advantage: Our statistics reflect our Board members views of our applicants. Usually, the case summary was the sole basis for a Board member's knowledge of an applicant.

In the remainder of this appendix, we list the findings of our survey.



"N" and Value Representations Table

	Civilian	Military
Type of Application		
N	472	1009
Civilian	100%	--
Army	--	62.3%
Navy	--	11.6%
Marine Corps	--	23.0%
Air Force	--	3.0%
Type of Discharge		
N	-0--	1009
Undesirable in Lieu of Court Martial	--	44.9%
Undesirable for Unfitness	--	15.6%
Undesirable by Court Martial	--	.2%
Total Undesirable Discharges	--	60.7%
Bad Conduct Discharge	--	37.6%
Dishonorable Discharge	--	1.8%
Year of Birth		
N	469	1005
1934 to 1939	--	1.5%
1940 to 1944	4.9%	6.6%
1945 to 1949	55.8%	47.0%
1950 to 1954	38.9%	41.0%
1955 - 1956	--	1.2%
Race		
N	394	993
White	87.1%	74.5%
Black	10.7%	20.5%
Spanish Surname	1.3%	3.5%
American Indian	--	0.7%
Oriental	0.8%	--
Other	0.3%	0.3%
Childhood		
N	397	764
With Both Parents	69.0%	52.0%
With One Parent due to Death	8.8%	10.7%
With One Parent due to Divorce	10.1%	10.2%
With One Parent due to Desertion	2.3%	5.2%
Parent Never Married	0.3%	1.0%
With One Step-Parent	6.0%	10.7%
With Other Relatives	3.3%	4.3%
With Non-Relatives	1.3%	3.1%

	Civilian	Military
Childhood Residence		
N	189	328
Urban	58.2%	47.3%
Suburban	10.5%	12.2%
Rural non-farm (small town)	17.5%	32.0%
Rural farm	5.8%	8.2%
Regions of Childhood		
N	399	789
1 1st Circuit: Maine, New Hampshire, Massachusetts, Puerto Rico, Rhode Island	3.3%	4.0%
2 2nd Circuit: Vermont, Connecticut, New York	6.3%	9.0%
3 3rd Circuit: Pennsylvania, New Jersey, Delaware, Virgin Islands	9.5%	9.2%
4 4th Circuit: Virginia, West Virginia, Maryland, North Carolina, South Carolina	7.0%	11.6%
5 5th Circuit: Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Canal Zone	10.8%	17.9%
6 6th Circuit: Michigan, Ohio, Kentucky, Tennessee	11.3%	13.6%
7 7th Circuit: Illinois, Indiana, Wisconsin	8.8%	7.1%
8 8th Circuit: Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska	6.3%	8.6%
9 9th Circuit: California, Montana, Idaho, Washington, Oregon, Nevada, Alaska, Hawaii	25.1%	8.7%
10 10th Circuit: Wyoming, Utah, Colorado, Kansas, Oklahoma, New Mexico	5.0%	4.9%
11 11th Circuit: District of Columbia	.3%	1.1%
12 Outside U.S. and Territories	1.3%	2.1%
13 More than one inter-circuit moves before age 18	4.5%	1.5%
Evidence of Family <u>Instability</u> : Most Severe		
N	114	326
1 Evidence of child abuse	.9	3.4%
2 Evidence of drug abuse	.9	.3%
3 Evidence of alcoholism	12.3	9.5%
4 Multiple marriages	12.3	16.9%
5 Serious family illness	5.3	11.0
6 Serious family mental illness	5.3	3.1
7 Parental promiscuity	2.6	2.8
8 Lack of harmony	40.4	35.9
9 Other	20.2	17.2

Evidence of Family Instability: Secondary		Civilian	Military
	N	52	124
1	Evidence of child abuse	3.8%	7.0%
2	Evidence of drug abuse	---	2.3%
3	Evidence of alcoholism	13.5	7.0%
4	Multiple marriages	11.5	7.0%
5	Serious family illness	3.8	14.0
6	Serious family mental illness	11.5	4.7
7	Parental promiscuity	1.9	0.8
8	Lack of family harmony	25.0	35.7
9	Other	28.8	21.7
Evidence of economic instability			
	N	130	245
1	Low income	23.1%	33.1%
2	Itinerent residence patterns	5.4%	6.1%
3	Intermittent employment	1.5%	2.0%
4	Low income and intermittent employment	1.5%	5.3%
5	Low income and itinerent residence pattern	1.5%	8%
6	Itinerent residence pattern and intermittent employment	1.5%	1.2%
7	All elements noted (itinerancy, intermittant, employ, low income)	.8%	.8%
8	Other evidence of economo-instability	6.9%	25.3%
9	Evidence of economic stability	57.7%	25.3%
Number of Siblings			
	N	428	897
	None	10.6%	13.1%
	One	15.9%	11.1%
	Two	22.0%	15.8%
	Three	21.7%	16.4%
	Four	11.4%	13.0%
	Five	6.5%	12.9%
	Six or More	12.2%	17.1%

Highest Degree Earned	Civilian	Military
N	435	941
Grade School Graduate	20.9%	62.2%
High School Graduate	56.8%	23.9%
GED Received	2.1%	3.6%
GED Received in Service	—	9.0%
GED Received in Prison	.2%	.6%
Post High School Vocational Training	1.6%	.2%
Bachelors Degree	14.3%	.2%
Advanced Degree (MA, MS, Phd)	3.9%	.1%
Professional Degree (J.D. M.D.)	—	.1%

AFQT Group (CM)

N	N/A	912
Group I	—	2.1%
" " II	—	15.8%
" " III	—	49.4%
" " IV	—	31.4%
" " V	—	.5%

Religion

N	191	9
CO-Jehovah's Witness	49.7%	—
CO-Quaker	.5%	—
CO-Mennonite	—	—
CO-Muslim	3.1%	(2)
CO-Bretheren	—	—
CO-Other	12.0%	(2)
Non-CO-Conventional (Prot,/Cath/Jews)	21.5%	(4)
Non-CO Uncoventional (Hare-Kreshane, etc)	3.7%	—
Personal Meral Code	9.4%	(1)

CO Application

N	211	11
Some Initiative Taken - No Application	24.2%	(4)
Application Made - No Action Taken	7.1%	—
Application Made - CO Draft Statue Awards	21.3%	—
Application Made Before Ordered to Report, Denied	24.6%	(2)
Application Made After Ordered to Report, Denied as Untimely	13.7%	—

	Civilian	Military
6 Application made after ordered to report-denied on the merits	6.6	—
7 Application made in service, accepted and assigned to non-combat duties	1.4	—
8 Application made in service, denied	—	(5)

Basis of CO decision

N	137	6
1 Pre-Welsh-approved religion	21.2%	—
2 Pre-Welsh-denied moral or ethical	6.6%	(2)
3 Pre-Welsh-denied-selective objector	2.9%	—
4 Pre-Welsh-denied-other	16.1%	(1)
5 Post-Welsh-approved-religious	13.9%	—
6 Post-Welsh-approved-moral or ethical	5.8%	—
7 Post-Welsh-denied-moral or ethical	11.7%	—
8 Post-Welsh-denied-selective objector	5.1%	(1)
9 Post-Welsh-denied-other	16.8%	(2)

(Note: United States v. Welsh decided on June 15, 1970)

Civilian Convictions for non-qualifying offenses

N	472	1009
0 No evidence of conviction noted	96.0%	88.2%
1 Non-violent felony	3.4%	6.3%
2 Violent felony	.2%	3.1%
3 Non-violent and violent felonies	.2%	1.2%
4 Multiple violent felonies	.2%	.6%

Military Convictions for Non-Qualifying Offenses (Highest applicable)
(Highest applicable)

	N/A	1009
0 No evidence of convictions noted	—	42.4%
1 NJP (s) for offense (s) particularly military in nature	—	16.7%
2 SCM (s) for offense (s) particularly military in nature	—	6.7%
3 SPCM (s) for offense (s) particularly military in nature	—	29.3%
4 GCM (s) for offense (s) particularly military in nature	—	.6%
5 NJP (s) for offense (s) not particularly military in nature	—	.5%
6 SCM (s) for offense (s) not particularly military in nature	—	.6%
7 SPCM (s) for offense (s) not particularly military in nature	—	1.6%
8 GCM (s) for offense (s) not particularly military in nature	—	.2%
9 UD - unfitness with no punished offenses	—	1.3%



Non-Qualifying Offense Specifications or Charges
At Time Of Discharge

Civilian

Military

N	N/A	1009
No evidence of other specifications or charges	—	86.1%
Other pending charges for peculiarly military offenses	—	2.4%
All other pending charges	—	.8%
Record of an NJP or SCM for peculiarly military offenses (in UD-unfitness cases only).	—	2.2%
Record of any other NJP or SCM (in UD-unfitness cases only).	—	1.3%
Court-martial conviction for a specification of a peculiarly military offense.	—	6.9%
Court-martial conviction for any other specification of a non-qualifying offense	—	.3%

Most Severe Sentence Type for Non-Qualifying Offenses

N	18	341
Incarceration for more than one year	(7)	15.0%
Incarceration for less than one year and probation: total over one year	(1)	2.6%
Incarceration for less than one year	(1)	70.4%
Probation for more than one year	(7)	1.5%
Probation for less than one year	(2)	10.3%

Time Sequence of Non-Qualifying Offenses

N	18	534
All prior to first qualifying offense	(7)	68.0%
All prior to last qualifying offense	(3)	16.7%
All between first and last qualifying offenses	—	1.5%
All after first qualifying offense	(2)	.7%
All after last qualifying offense	(4)	3.7%
All before first and after last qualifying offense	(2)	4.3%
Before, between and after qualifying offenses	—	5.1%

Year of First Qualifying Offense

Civilian

Military

N

126

631

1964

—

3.0%

1965

.8%

4.3%

1966

1.6%

5.9%

1967

3.1%

7.1%

1968

2.3%

11.9%

1969

19.5%

16.2%

1970

21.9%

17.9%

1971

22.7%

16.5%

1972

19.5%

12.5%

1973

6.3%

3.0%

1974

.8%

—

Year of Last Qualifying Offense

N

455

995

1963

.2%

—

1964

—

.8%

1965

1.1%

2.2%

1966

1.8%

3.5%

1967

1.3%

6.9%

1968

5.5%

7.5%

1969

12.7%

15.0%

1970

24.3%

16.8%

1971

27.9%

19.2%

1972

17.5%

16.0%

1973

5.9%

9.1%

1974

1.3%

2.1%

Most Severe Sentence Type for Qualifying Offense	Civilian	Military
N	441	455
Incarceration	37.0%	97.4%
Probation - Alternative Service	44.8%	.2%
Probation - Fines or Forfeitures	4.1%	.7%
Probation Only	6.2%	.7%
Incarceration Suspended in Lieu Of Probation	7.5%	1.0%
Appeals Of Conviction		
N	472	1009
None	93.2%	77.6%
Federal Court Appeals	6.8%	.27%
Courts-Martial Appeal	-	
Appeal of Discharge	-	.8%
Type of Civilian Qualifying Offense		
N	464	N/A
Failure to Register	2.6%	-
Failure to Inform of Charge	9.7%	-
Failure to Report for Physical	3.7%	-
Failure to Report for Induction	32.1%	-
Failure to Submit for Induction	31.7%	-
Failure to Perform A/S	13.4%	-
Combination Including Induction	6.5%	-
Combination Not Including Induction	.4%	-

Circuit of Conviction

Civilian

Military

N			
		45%	N/A
1st Circuit		2.6%	-
2nd Circuit		5.9%	-
3rd Circuit		8.9%	-
4th Circuit		7.0%	-
5th Circuit		11.8%	-
6th Circuit		12.9%	-
7th Circuit		7.6%	-
8th Circuit		6.5%	-
9th Circuit		30.9%	-
10th Circuit		5.9%	-
11th Circuit		--	-

Age at Enlistment or Induction

N		N/A	1006
15		-	.1%
16		-	.5%
17		-	30.8%
18		-	25.7%
19		-	21.2%
20		-	12.1%
21		-	4.1%
22		-	1.9%
23		-	1.3%
24 or older		-	2.4%

U.S. DEPT. OF JUSTICE
FBI

Military Intake

Civilian

Military

N	N/A	
Drafted	-	15.6%
Enlisted for 2 years	-	11.1%
Enlisted for 3 or more years	-	46.0%
Reenlisted	-	7.2%
Judicially Induced Enlistment	-	.4%
Enlistment Length Unknown	-	19.7%

Hardship Reassignment Requested

N	N/A	100 %
Temporary deferral from active duty, granted	-	.2%
Temporary deferral from active duty, denied	-	.1%
Compassionate leave, granted	-	.7%
Compassionate leave, denied	-	1.4%
Compassionate reassignment, granted	-	.6%
Compassionate reassignment, denied	-	1.6%
Hardship discharge, denied	-	5.6%
None noted	-	89.8%

Vietnam Experience

N	N/A	100%
Volunteer, partial tour ending in injury		.5%
Volunteer, partial tour ending in AWOL		1.1%
Volunteer, partial tour ending other reasons		1.1%
Voluntary full tour		6.3%
Non-volunteer, partial tour ending in injury		1.0%
Non-volunteer, partial tour ending for other		1.3%
Non-volunteer, partial tour ending for other reasons		2.3%
Non-volunteer, full tour		10.0%
More than one tour		3.0%
No tours		73.4%

U.S. AIR FORCE

Civilian

Military

Nature of Vietnam Service

	N	N/A	
Saigon			219
Country, non-combat	-	-	.5%
Country, combat, one campaign	-	-	18.3%
Country, combat, two campaigns	-	-	18.3%
Country, combat, three pr more campaigns	-	-	9.6%
Country, combat, no record of campaigns	-	-	26.5%
			26.9%

Decorations for Valor (Highest Awards Listed Increasing Order) N

	N	N/A	
Vietnam Cross X of Gallantry w/Palm and Frame			36.1%
(Service) Commendation Medal w/"V" device			23.6%
Air Medal w/"V" device			8.3%
Bronze Star w/"V" device			30.6% 2.6%
Silver Star			1.4%

Type of Military Qualifying Offense

	N	N/A	
AWOL			990
Desertion			89.9%
Missing Movement			2.7%
AWOL and Desertion			.2%
AWOL and Missing Movement			6.2%
Desertion and Missing Movement			.7%
			.3%
Number of Unpunished AWOLs, etc.		N/A	Mean = 1.6
Number of NJPs for AWOL, etc.		N/A	Mean = 1.9
Number of SCMs for AWOL, etc.		N/A	Mean = 1.2
Number of SPCMs for AWOL, etc.		N/A	Mean = 1.4
Number of GCMs for AWOL, etc.		N/A	Mean = 1.008

	<u>Civilian</u>	<u>Military</u>
Circumstances of Last/Discharge Military Offense	N/A	
N	-	823
Left from Basic Training	-	6.9%
Left from advanced infantry training	-	10.1%
Left from stateside duty, not after Vietnam Service	-	51.9%
Left from stateside duty, after Vietnam Service	-	24.1%
Failed to return to Vietnam from R&R or other leave	-	1.3%
Left from non-combat area of Vietnam	-	2.2%
Left from combat area of Vietnam	-	1.2%
Left from actual combat	-	2.3%

Criminal Intake of Last Qualifying Offense

N	230	700
Surrendered	71.3%	700 52.2%
Apprehended	28.7%	52.2% 47.8%

	Civilian	Military
Place While AWOL or Otherwise at Large		
N	181	397
Immediate return to authorities	6.6%	2.5%
Hometown, not in hiding	63.0%	73.0%
Elsewhere in US, with family	2.2%	8.1%
Elsewhere in US, not with family, not in hiding	14.4%	5.3%
Elsewhere in US, in hiding (e.g., under assumed name)	2.2%	1.0%
In Canada	6.6%	2.0%
In the foreign country of military assignment	-	6.0%
In another foreign country	5.0%	2.0%
Activities While AWOL or otherwise at Large		
N	112	284
Employed, full-time, white collar	23.2%	2.3%
Employed, full-time, skilled blue collar	20.5%	32.1%
Employed, full-time, unskilled	24.1%	47.0%
Employed, part-time, white collar	-	-
Employed, part-time, skilled blue collar	1.8%	.9%
Employed, part-time, unskilled	7.1%	3.7%
Employed intermittently	14.3%	5.1%
Unemployed	7.1%	7.9%
Other	1.8%	.9%

Secondary Reasons for Offense

N	Civilian 204	Military 649
Religious objection to all war	6.9	.3%
Ethical or moral objection to all war (non-religious).	18.1	.8
Specific political moral or ethical objection to the war in Vietnam (not religious)	14.2	1.1
Avoid going to Vietnam	2.5	1.2
Avoid going to overseas replacement station, not in Vietnam and not known to be Europe	-	.2
Went AWOL from Vietnam	-	.5
Failed to return to Vietnam from leave or R&R	-	.3
Post combat psychological problems complained of.	-	1.1
Did not like service	1.0	6.2
Other, articulated or unarticulated opposition to war	5.4	.3
Hindrance of CO application or failure to provide proper assistance	2.9	.3
Denial of CO application	3.2	.3
Hindrance of request for hardship discharge or compassionate reassignment.	-	2.0
Denial of hardship discharge or compassionate reassignment.	-	1.2
Improper recruitment into armed forces--enlistment in lieu of sentence by criminal authorities.	-	.2
AFQT Category IV.--Project 100,000	-	4.0
Breach of assignment preference or occupational choice.	.6	2.0
Denial of request for leave.	.5	1.7
Improper orders: Told to go home and wait orders; lost soldier.	-	.3
Other Procedural Unfairness	4.4	6.6
Drug or alcohol problems/dependence	1.6	2.3
Personal medical problem;	1.5	5.2
Personal, emotional or psychological problem	3.9	8.9
Marital problem	1.0	3.7
Family Medical problem	2.5	8.3
Family emotional or psychological problem	.5	5.2
Family problems with the law	.5	.6
Family financial problem	2.0	15.1
Other personal or family problems	6.9	10.3
Civilain convictions	2.0	.3
Avoidance of punishment for other actions	-	.8
Boredom, lack of satisfaction, sense of uselessness,	-	1.4
Went AWOL cause he wanted to go to Nam and they cou	-	.3
wouldn't let him go	-	-
Personal Problem w/law-not convictions	-	-
Selfish reasons	5.4	4.5
Immaturity	2.9	2.3

<u>Primary Reasons for Offence</u>	<u>Civilian</u>	<u>Military</u>
N	431	926
Religious objection to all war	34.1%	.4%
Ethical or moral objection to all war (non-religious)	23.2%	1.0%
Specific political moral or ethical objection to the war in Vietnam (not religious)	14.9%	2.5%
Avoid going to Vietnam	.7%	1.1%
Avoid going to overseas replacement station, not in Vietnam and not known to be Europe	-	.1%
Went AWOL from Vietnam	-	.5%
Failed to return to Vietnam from leave or R&R	-	.2%
Post combat psychological problems complained of.	-	1.8%
Did not like service	.5%	9.7%
Other, articulated or unarticulated opposition to war	2.8%	.5%
Hindrance of CO application or failure to provide proper assistance.	-	-
Denial of CO application.	3.2%	.2%
Hindrance of request for hardship discharge or compassionate reassignment	-	.2%
Denial of hardship discharge or compassionate reassignment.	.2%	1.7%
Improper recruitment into armed forces--enlistment in lieu of sentence by criminal authorities.	-	.4%
AFQT Category IV.--Project 100,000	-	2.3%
Breach of assignment preference or occupational choice.	.2%	2.6%
Denial of request for leave.	-	1.1%
Improper orders: Told to go home and wait orders; lost soldier	-	.3%
Other procedural Unfairness	2.3%	4.6%
Drug or alcohol problems/dependency	.9%	4.9%
Personal medical problem;	1.9%	3.6%
Marital problem	.2%	8.4%
Family Medical problem	1.9%	11.1%
Family emotional or psychological problem	1.2%	2.6%
Family problems with the law	-	.1%
Family financial problem	1.6%	12.5%
Other personal or family problems	2.1%	6.4%
Civilian convictions	-	.3%
Avoidance of punishment for other actions	-	1.0%
Boredom, lack of satisfaction, sense of uselessness	.2%	1.7%
Went AWOL cause he wanted to go to Nam and they wouldn't let him go	-	.6%
Personal Problem 2/law-not convictions	.7%	.1%
Selfish reasons	4.9%	4.3%
Immaturity	.7%	4.3%



Civilian

Military

Last known family status (applicant's family)

N	Civilian	Military
Single, no dependents	372 46.2%	768 38.4%
Single, dependents	2.7%	2.3%
Widowed no dependents	-	.1%
Seperated, no dependents	.5%	.8%
Divorced, or seperated, dependents	2.7%	3.4%
Married, no dependents other than spouse	23.7%	15.2
Married, dependents other than spouse.	21.0%	38.4%

Employment Activities at Time of Application

N	Civilian	Military
Employed, full-time, white collar	360 26.1%	316 6.6%
Employed, full-time, skilled blue collar	16.9%	22.2%
Employed, full-time, unskilled	21.1%	17.4%
Employed, part-time, white collar	.4%	-
Employed, part-time, skilled blue collar	1.1%	.6%
Employed, part-time, unskilled	2.5%	.6%
Employed intermittently	2.9%	1.6%
Unemployed	2.1%	11.1%
In trade school	.4%	.3%
In college	7.5%	2.5%
In graduate school	1.8%	.3%
In trade school, employed part-time	-	.6%
In college, employed full-time	.7%	-
In graduate school, employed, part-time	2.1%	.3%
Incarcerated, awaiting trial	.4%	.3%
Incarcerated, past conviction	3.6%	22.8%
Incarcerated, for qualifying offense (furloughed by Executive Order)	7.5%	11.4%

Mental or Physical Problems

N	Civilian	Military
None Noted	472 86.7%	1009 71.9%
Physical Problems, No Disability	2.5%	4.0%
Physical Problem, With Disability	1.9%	2.9%
Psychological Problems pertaining to Reaction to Authority	.8%	5.0%
Other Psychological Problems	5.7%	10.3%
Problems with drugs	1.7%	5.0%
Problems with alcohol	.6%	1.0%

Existence and Origin of Medical Problem

N	Civilian	Military
None	472 93.4%	1009 84.5%
Congenital	1.3%	2.1%
Pre-Military/Draft	4.7%	3.7%
Emanating from draft or military situation	-	2.9%
Possibly emanating from Vietnam experience	-	.6%
Definitely emanating from Vietnam experience	-	3.1%
Post-military/draft	-	.6%
Origin Unknown	.6%	2.6%

	Civilian	Military
Existence and Origin of Psychological Problems		
N	472	1009
None	90.5%	78.9%
Congenital	1.9%	2.1%
Pre-Military/Draft	5.9%	5.4%
Emanating from draft or military situation	1.1%	7.0%
Possibly emanating from Vietnam experience	-	1.7%
Definitely emanating from Vietnam experience	-	3.2%
Post-military/draft	-	.3%
Origin Unknown	.6%	1.5%
Existence and Origin of Family Problems		
N	472	1009
None	86.9%	60.2%
Congenital	.4%	4.9%
Pre-Military/Draft	7.2%	12.1%
Emanating from draft or military situation	4.2%	15.8%
Possibly emanating from Vietnam experience	-	.4%
Definitely emanating from Vietnam experience	-	.1%
Post-Military/draft	.2%	1.4%
Origin Unknown	1.1%	5.3%
Existence and Origin of Problem with the Law		
N	472	1009
None	71.8%	75.8%
Pre-Military/Draft	5.3%	.7%
Emanating from draft or military situation	21.8%	19.0%
Possibly emanating from Vietnam experience	-	.6%
Definitely emanating from Vietnam experience	-	1.4%
Post-military/draft	-	1.7%
Origin Unknown	1.0%	.7%
Existence and Origin of Financial/Employment Problems		
N	472	1009
None	93.5%	81.0%
Congenital	.2%	1.2%
Pre-Military/Draft	1.3%	3.9%
Emanating from draft or military situation	4.2%	10.4%
Possibly emanating from Vietnam experience	-	.3%
Definitely emanating from Vietnam experience	-	.2%
Post-military/draft	.2%	.7%
Origin Unknown	.4%	2.4%

Case Dispositions

What were our case dispositions? Almost 50% of our applicants received full pardons without being required to perform alternative service. Another 45% of our applicants were asked to perform short periods of alternative service, and approximately 5% were denied clemency.

As described subsequently, our military and civilian applicants were very different. Our results show that we treated them differently. In general, we were more generous to our civilian applicants because of the time they had spent in jail and in performing court-ordered alternative service. Also many more of our military applicants had committed violent felony offenses subsequent to their discharges. This resulted in a number of "No clemency decisions.

PCB Final Dispositions - Civilian

	Number	Percent	Cumulative
Pardon	1652	82.6	82.6
1 - 3 months	164	8.2	90.8
4 - 6 months	98	4.9	95.7
7 - 9 months	22	1.1	96.8
10-12 months	34	1.7	98.5
Over 12 months	8	0.4	98.9
no clemency	22	1.1	100.0
	2,000	-	100.0

PCB Final Dispositions - Military

	Number	Percent	Cumulative
Upgrade *	468	3.6	3.6
Pardon	4420	34.0	37.6
1 - 3 months	2613	20.1	57.7
4 - 6 months	2977	22.9	80.6
7 - 9 months	1235	9.5	90.1

	Number	Percent	Cumulative
10-12 months	442	3.4	93.7
Over 12 months	26	0.2	93.7
No Clemency	819	6.3	100.0
	<u>14,000</u>	<u>-</u>	<u>100.0</u>

Despite its administration by 94 different United States Attorneys, the Justice Department Program was applied very evenhandedly. There were some aberrations: The Eastern District of New York gave ____ of ____ applicants 24 months of alternative service, while New York's Western District gave its _____ applicants an average of _____ months -- with only _____ receiving the maximum 24 months. However, the table below indicates that the ten judicial circuits all assigned an average of 17-21 months of alternative service.

Average DOJ Alternative Service by Judicial Circuit

<u>Circuit</u>	<u>Number of Cases</u>	<u>Average Sentence</u>
DC	1	24.0
First	56	17.5
Second	169	19.6
Third	48	20.5
Fourth	30	19.8
Fifth	88	22.5
Sixth	54	20.9
Seventh	18	16.8
Eight	37	18.1
Ninth	186	19.6
Tenth	<u>16</u>	<u>21.1</u>
	703	19.9

The charts on the following two pages provide a basis for comparing the case dispositions of the Clemency Board with those of the DOJ and DOD programs. When past punishments are not considered, our program appears much more generous. However,

when prior imprisonment * and alternative service are considered, our dispositions become much more comparable to those of the other programs.

*Our Board determined, as part of our baseline formula, that three months credit must be given for every one month of imprisonment.

On the average, our civilian applicants had served an average of four months in prison. In addition, they had performed an average of thirteen months on alternative service. Many also had served long periods of probation. Others had paid fines.

Our military applicants also had been punished prior to applying to our Board. They had received less than honorable discharges; they had been incarcerated for an average of about 2 months; they had lost rank and paid partial forfeitures; some had served periods of probation; or had otherwise suffered the stigma of having received bad discharges. The Department of Justice and Department of Defense programs required longer periods of alternative service, as shown below.

DOJ FINAL DISPOSITIONS - ALTERNATIVE SERVICE

	Number	Percent	Cumulative
None	0	0	0
1 - 5 Months	11	1.6	1.6
6 -12 months	83	11.8	13.4
13-18 months	157	22.4	35.8
19-24 months	450	64.2	100.0

DOD Final Dispositions - Alternative Service

	Number	Percent	Cumulative
None	0	0	0
1 - 5 months	123	2.2	2.2
6 - 12 months	731	13.3	15.5
13-18 months	372	6.8	22.3
19-24 months	4278	77.7	100.0

The DOJ and DOD programs did not have any "No Clemency" cases. The President directed both programs to begin with a period of alternative service of twenty-four months, reducing it where appropriate in light of mitigating circumstances. Unlike ours, their applicants had never been punished for their offenses. They had remained fugitives, escaping punishment until the time they surrendered.