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IV. PCB APPLICANTS

C. OUR MILITARY APPLICANTS

C. Our Military Applicants

During the Vietnam War, 7,500,000 individuals served in uniform. Most served well under difficult circumstances, and 94% received Honorable Discharges. One-third of them served in Vietnam, where 56,000 lost their lives and 300,000 were wounded. Almost one in twelve Vietnam era servicemembers -- 500,000 -- went AWOL ("Absent Without Official Leave") one or more times. Almost half of the AWOL offenders were absent for less than 30 days. Usually, they were reprimanded or given a minor (non-judicial) punishment.

More than one half of these offenders -- 325,000 -- left their units for more than 30 consecutive days, thereby giving rise to administrative classification as deserters; ^{*/} over 10,000 never returned. Of those who did return, about one-third (123,000) faced court-martial charges. Many (55,000) avoided trial by accepting a "For the Good of the Service" ^{**/} discharge, while another 68,000 did stand trial, with all but 500 found guilty. The majority (42,500) of those found guilty were punished and returned to their units; the others were adjudged Bad Conduct (23,000) or Dishonorable (2,000) Discharges. The remaining 63,000 had established a pattern of misconduct which prompted an administrative discharge: 43,000 were given General Discharges for Unsuitability, and 20,000 received Undesirable Discharges for Unfitness.

The President's clemency program included the 100,000 who had received Undesirable, Bad Conduct, or Dishonorable Discharges --

^{*/} A 30 day absence subjects a serviceman to the maximum punishment authorized for an Article 86 UCMJ, absence without leave offense. Judicial proof of desertion, however, requires more than proof of a 30 day absence.

^{**/} "For the Good of the Service" discharges were commonly known to us as discharges "in lieu of court-martial" described in service regulations. SEE: Army Regulation 635-200, Chapter 10.

plus the 10,115 who were still at large. Their offenses were often very serious -- some AWOLs were for as long as seven years -- and many were repeat offenders. This group comprised only one-sixth of all AWOL offenders and one-third of all desertion offenders during the Vietnam War.

In the discussion which follows, we trace the general experiences of our military applicants. In sequence, we look at the following:

1. Background
2. Induction or Enlistment in the Armed Forces
3. Early Experiences in the Military
4. Requests for Leave, Reassignment, or Discharge
5. Assignment to Vietnam
6. AWOL offenses
7. Encounters with the Military Justice System
8. Effects of a less than Honorable Discharge

1. Background

Our military applicants were raised in small towns or on farms (40%), and a disproportionate number (30%) came from the South. Generally, they came from disadvantaged environments. Many (60%) grew up in a broken home struggling to cope with a low income (57%). Most were white, but a disproportionate percentage were black (21%) and Spanish-speaking (4%). Their average IQ was very close to the national average. Nonetheless, over three-quarters dropped out of high school before joining the service, while less than one-half of one percent graduated from college. Despite the common belief that our applicants resisted the war, our applicants were not articulate, well-educated

opponents of the war; almost none of them (0.2%) had applied for a conscientious objector draft classification before entering the military.

2. Induction or Enlistment in the Military

Our applicants began their military careers at an early age. Almost one-third enlisted at age 17, and over three-quarters were in uniform by their 20th birthday. Most (84%) enlisted rather than be drafted. Our applicants represented the Army (63%), the Marines (23%), and to a lesser degree, the Navy (12%) and the Air Force (3%).

The reasons for enlistment varied from draft pressure to the desire to learn a trade, to the simple absence of anything else to do. Many of them saw the military as an opportunity to become more mature.—/

(Case #00148) Applicant enlisted after high school because he did not want to go to college or be inducted into the Army.

(Case #02483) Applicant enlisted to obtain specialized training to become a microwave technician.

(Case #00179) Applicant enlisted at age 17 because he wanted a place to eat and a roof over his head.

(Case #00664) Applicant enlisted because he was getting into trouble all the time and felt that service life might settle him down.

As the Vietnam war expanded America's military manpower needs, the pressures on recruiters became very intense. Many recruiters were helpful to our applicants by arranging entry into the preferred military occupational specialty and geographic area of assignment.*

(Case #00356) Applicant enlisted at age 17 for motor maintenance training, but instead was trained as a cook. This action caused him disappointment and frustration. His grandmother contended that he was misled by the recruiter.

(Case #01371) Applicant started drinking at age 13 and was an excessive user of alcohol. He was expelled from two schools after getting into trouble with teachers because of his dislike and disrespect for authority. He was turned down for enlistment by the Air Force. The Naval Recruiting Officer told him to omit these facts from his application for enlistment in the Navy.

PROJECT 100,000

Before the Vietnam War, the military generally had not accepted persons for enlistment or induction if they had Category IV scores on their AFQT test,** imposing an enlistment barrier at the 30th percentile. Some individuals scoring between the 15th and 30th percentiles were brought into the service under project STEP.

In August, 1966, Secretary of Defense, Robert McNamara announced Project 100,000 "to use the training establishment of the Armed Forces to

*The press for manpower led to improprieties by recruiters and misunderstandings by enlistees, which some of our applicants claimed were justifications for their unauthorized absences.

**The Armed Forces Qualification Test (AFQT) was the basic test for mental qualification for service in the military, administered at the Armed Forces Entrance and Examination Stations (AFES).

help certain young men become more productive citizens when they return to civilian life." Like STEP, Project 100,000 offered the opportunity and obligation of military service to marginally qualified persons by reducing mental and medical standards governing eligibility. During its first year, 40,000 soldiers entered the military under this program. Thereafter, it lived up to its name by enabling 100,000 marginally qualified soldiers to join the service each year.

Military studies have indicated that the opportunity for technical training was the principal motivation for the enlistment of Category IV soldiers. However, over half enlisted at least partly because of the draft pressure. Other reasons for enlistment were to travel, obtain time to find out what to do with one's life, serve one's country, and enjoy educational benefits after leaving the service. Despite their eagerness for vocational training, many Category IV soldiers soon found themselves being trained in the combat arms -- skills of little significance in the civilian job market. Almost 40% of all soldiers in combat arms positions in 19__ had Category IV AFQT scores. — However, some of our less educated applicants did learn marketable skills, and 13% received a high school equivalency certificate while in the service.

Almost one-third of our applicants (32%) were allowed to join the military despite pre-enlistment AFQT scores at or below the 30th percentile, ~~including one half of 1% whose scores were below the 10th percentile and who were generally statutorily ineligible for military service.~~

(Case No. 00847) Applicant had an AFQT of 11 and a GT (IQ score) of 61 at enlistment. He successfully completed basic training, but went AWOL shortly thereafter.

(Case No. 0229) Applicant had an 8th grade education and an AFQT of 11. From a broken home, he was enthusiastic about his induction into the Army, believing that he would have financial security and would receive technical training. His lack of physical agility and difficulties in reading and writing caused him to fail basic training. He was in BCT for nine months before he was sent to AIT as a tank driver. He continued to have learning problems in advanced training. This problem was compounded by the ridicule of his peers who discovered that he required several months to complete basic training.

Not all of our Category IV applicants joined the service because of Project 100,000. Some had other test scores qualifying them for enlistment under the earlier standards. Nonetheless, we suspect that many of our applicants would never have been in the service were it not for Project 100,000.

Our Category IV applicants tended to be from disadvantaged circumstances. Compared to our other applicants, they were predominantly Black or Spanish-speaking (42% vs. 18%)* and grew up in cities (55% vs. 44%). Their families struggled with low incomes (72% vs. 49%), and they dropped out of high school (75% vs. 56%). The quality of their military service was about the same as that of our other applicants; however, they had no more punishments for non-AWOL offenses (53% vs. 52%) or non-AWOL charges pending at time of discharge (13% vs. 12%). Despite this, a greater percentage received administrative Undesirable Discharges (68% vs. 57%).

* The first figure is the percentage of the Category IV soldiers, the second refers to all other soldiers.

We saw only the failures of Project 100,000 -- never its successes. If our applicants were representative of all 100,000 discharged and fugitive servicemen eligible for clemency, 35,000 of the latter had Category IV AFQT scores. Of all Category IV soldiers during the Vietnam Era, _____% committed AWOL offenses and were eligible for clemency. Of all Category I - II soldiers, _____% committed AWOL offenses and were eligible for clemency.

3. Early Experiences in the Military

Our applicant's first encounter with the military was in basic training.** It was during these first weeks that our applicants had to learn the regimen and routine of military life. For many, this was their first experience away from home and the first time they faced such intense personal responsibilities. Some of our applicants did not adjust well to the demands placed on them. Homesickness and emotional trauma found expression ranging from commonplace complaints and tears, to the more unusual conduct:

(Case No. 02483) Applicant went on aimless wanderings prior to advanced training. He finally lost control of himself and knocked out 20 windows in the barracks with his bare hands, resulting in numerous wounds to himself.

Ethnic and cultural differences among recruits posed problems for others who did not get along well in the close quarters of the barracks environment.

(No. 0309) During boot camp, applicant, of Spanish heritage, was subjected to physical and verbal abuse. He recalls being called "chili bean" and "Mexican chili". His ineptness also made him the butt of his boot camp unit. He wept at his trial when he recalled his early experiences that led to his AWOL.

(No. 10125) Applicant's version of his various problems is that he could no longer get along in the Marine Corps. Other Marines picked on him because he was Puerto Rican, and wouldn't permit him to speak Spanish to other Puerto Ricans and finally they tried to get him into trouble when he refused to let them "push" him around.

Women, in particular had unique problems. REJECT

** Since 63% of our applicants were Army, our discussion will center (unless otherwise specified) on Army procedures, which differ in degree from other services, but not in substance.

(Case No. 00704) Applicant was a high school graduate with a Category I AFQT score and a GT (IQ test) score of 145. She complained that other soldiers harrassed her without cause and accused her of homosexuality. She departed AWOL to avoid the pressure.

Incidents of AWOL during basic training usually resulted in minor forms of punishment. Typically, a new recruit would receive a non-judicial punishment resulting in restriction, loss of pay, or extra duty. Seven percent of our applicants were discharged because of an AWOL commencing during basic training.

Following basic training, pressures on the average soldier with family or personal problems may have increased, incidental to a transfer to another unit for advanced or on the job training. Altogether, 10% of our applicants were discharged for an AWOL begun during advanced training. Individual transfers resulted in breaking up units and frequently intense personal friendships. The AWOL rate tended to be higher for soldiers "in transit" to new assignments.—/

Many of our applicants were discouraged by training in an occupational speciality they feared would lead to Vietnam assignments. Others were trained in jobs which they found unsatisfying and some of our applicants were given details which made no use of their newly-earned skills*.

(Case No. 9488) Applicant found himself pulling details and mowing grass rather than working in his military occupational speciality. He then went home and did not return for over three years.

- * Scheduling of schools, formation of units, personnel transfers and other administrative actions may have led to delays, assignments to transient billets, and temporary details of newly trained personnel to duties not utilizing their skills. Also, military life, especially for lower ranking enlisted personnel, required the performance of certain duties for which no training was required, such as kitchen patrol and area cleanups.

Others were still having difficulty adjusting to the many demands of military life. As in civilian employment circles, a daily routine had to be followed, superiors had to be treated with respect and orders had to be obeyed. The civilian's or service-member's failure to comply with these expectations could result in his being fired, with attendant loss of pay, promotability and status, or transfer. But the servicemen may have violated military custom or law which could lead to disciplinary action. Altogether, over half (53%) of our applicants were punished for one or more military offenses other than AWOL which would not have been criminal offenses in civilian life. Only 3% were punished for military offenses comparable to civilian crimes (such as theft or vandalism).

(Case No. 14392) Applicant had difficulty adjusting to the regimentation of Army life. While he was in the service, he felt that he needed to have freedom of action at all times. He would not take guidance from anyone, was repeatedly disrespectful, and disobeyed numerous orders. His course of conduct resulted in his receiving three non-judicial punishments and three Special Court-Martial.

After training periods were completed, our applicant's morale often declined. This is probably due to the break-up of units with soldiers moved to different duty assignments. Therefore, much of the closeness and camaraderie of their early military life was disrupted. Many of our applicants faced more loneliness than before, with personal and family pressures leading to numerous instances of AWOL. A majority (52%) of our applicants were discharged for AWOL offenses occurring during stateside duty other than during training.

4. Requests for Leave, Reassignment, or Discharge

Most of our applicants complained of personal or family problems during their military careers. Parents died, wives had miscarriages, children had illnesses, houses were repossessed, families went on welfare, and engagements were broken.

(Case No. 3289) The applicant failed the first, second and fourth grades, and quit high school in his first year because he was uncomfortable there. He was drafted into the Army and in view of his educational deficiencies, was sent to a Special Training Company. His GT score was 54 and his AFQT score of 14 placed him in Category IV. During his 4 months and 19 days of creditable service he was absent without official leave on five occasions. He was motivated in each instance by his concern for his grandmother who was now living alone and who he believed needed his care and support.

The military has remedies for soldiers with these problems. They could request leave, reassignment (compassionate, or normal change of duty station), and, in extreme cases, discharge due to a hardship. Unit officers, chaplains, attorneys of the Judge Advocate General's Corps, and Red Cross workers were there to render assistance within their means. Because of impatience, bashfulness, distrust, or misinformation, many applicants never tried to solve their problems through military channels. Other applicants indicated that they tried some of these channels but failed to obtain the desired relief.

(Case No. 1244) Applicant's wife was pregnant, in financial difficulties and being evicted; 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 which were denied.

The Department of Defense discovered that 58% of its clemency applicants did seek help from at least one military source before going AWOL. However, only 45% approached their commanding officer, and fewer yet approached an officer above the Company level. Only 1.3% of our applicants were granted leave or reassignment to help them solve the problem which led to their AWOL. By contrast, 8.6% had their leave or reassignment requests turned down.

(Case No. 74-436) Applicant received information that his pregnant wife was in the hospital. She had fainted and fallen on the edge of a coffee table and had started bleeding internally. Applicant asked his commanding officer for permission to return home after informing him

of his wife's difficulty and of the risk of a miscarriage. This request was denied, so he went AWOL.

Sometimes, the enormity of the problem made one period of leave insufficient for the applicant's purpose.

(Case No. 01336) While applicant was home on leave to get married, a hurricane flooded his mother-in-law's house, in which he and his newly wed wife were staying. Almost the entire property and his belongings were lost. He requested and was granted a 21-day leave extension, which he spent trying to repair the house. However, the house remained in an unliveable condition, and his wife began to suffer from a serious nervous condition. Applicant went AWOL for four days to ease the situation. He returned voluntarily and requested a Hardship Discharge or a six-month emergency leave, both of which were denied. He then went AWOL.

Requests for leave or reassignment were matters within a commanding officer's discretion.*

The Hardship Discharge offered a more lasting solution to the conflict between a soldier's problems and his military obligations, without the stigma of most other administrative separations. To get a Hardship Discharge, he had to submit a request in writing to his commanding officer, explaining the nature of his problem and how a discharge would help him solve it. The Red Cross was often asked for assistance in documenting the request. Higher headquarters was required to review the request and had the power to make final decisions. None of our applicants received Hardship Discharges of course -- but _____, 000 were granted during the Vietnam War to individuals who adequately documented problems as required by service regulations.

* Requests for leave were matters within the Commanding Officer's discretion. However, leave is earned at the rate of 30 days per calendar year (2½ days per month for satisfactory service) and individuals often used leave substantially in excess of the amount they had earned. Commanding Officers could not normally authorize "advance leave" in excess of 30 days, even "Emergency Leave" was charged against the annual leave allowance. As a general rule was no procedure available to military personnel comparable to "Leave Without Pay" or a sabbatical leave as in the civilian sector.

Occasionally, our applicants requested reassignments not because of their need to be close to home, but because of a dislike for their unit or commanding officer. Though reassignments were not always easy to arrange,— a procedure was adopted in light of the emerging volunteer army to permit persons with similar skills to switch jobs requiring similar skills with a willing service member at a different installation.

The soldier who was conscientiously opposed to war could apply for in-service conscientious objector status. Very few of our applicants did. Only 1.1% took any initiative to obtain this in-service status, and only 0.5% made a formal application. It is likely that the rate of C.O. applications and approvals would have been higher if the services permitted their judge advocates to take active roles in the C.O. application process at no cost to the service member (also true of Hardship Applications). While the soldier was entitled to counsel at the various stages of the proceeding, counsel was not furnished by the Government, and civilian counsel could have been very expensive. Since the C.O. application process is one of the most elaborate administrative proceedings that an individual soldier may initiate, the average soldier

Reassignment practices varied with individual services; in general, members could be transferred within command, with minimal difficulty, major geographical reassignments required high level authority.

would likely become confused without proper guidance in the preparation of the application, its documentation, and presentation before the hearing officer. Moreover without someone to make appropriate inquiries into the status of the application, the soldier could easily become disillusioned and frustrated by the delays in processing. These delays might have run as long as four months -- and even longer if the service member failed to comply with all regulatory requirements or became frustrated and departed AWOL after filing his request (thereby stopping all favorable personnel actions).

There are two types of conscientious objector applications. One resulted in reassignment to a non-combatant activity, while the other provided for a discharge under honorable conditions. Each type involves separate but similar procedures. Both procedures put the burden of proof on the applicant, who was required to submit statements on six separate questions concerning the origin, nature, and implications of his conscientious objection. The applicant had to "conspicuously demonstrate the consistency and depth of his beliefs." —/ It was difficult for the inarticulate person to meet this standard.

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(Case No. 10402) For a year-and-a-half after he was drafted, applicant tried to obtain conscientious objector status, because he did not believe in killing human beings. He is minimally articulate, but stated that even if someone was trying to kill him, he could not kill in return. He talked to his Captain and the Red Cross, neither of whom found his aversion to taking human life to be persuasive. When his application was denied and he was scheduled for Vietnam he went AWOL.

After submitting his application, the soldier was interviewed by a chaplain and a military psychiatrist. The chaplain had to comment on the sincerity and depth of the applicant's belief, and the psychiatrist evaluated him for mental disorders. One of our applicants alleges a difficult time with a psychiatrist he consulted regarding a C.O. application.

(Case No. 0472) Three years after enlisting in the Navy, applicant made several attempts to be recognized as a conscientious objector. He spoke with chaplains, legal officers, doctors, and a psychiatrist. He told the psychiatrist of his opposition to the war in Vietnam and of his heavy drug use. The psychiatrist threw his records in his

face and told him to get out of his office. He went AWOL after his experience with the psychiatrist.

The conscientious objectors next stop was to present his case before a hearing officer, who in turn made a recommendation through the chain of command on his request. The final authority rested either with the general Court-Martial convening authority (usually the installation commander) or with the administrative affairs office in the appropriate Service Department Headquarters.

Approximately 17,000 requests for in-service conscientious objector status were made during the Vietnam War. Altogether, _____ were granted. The approval rate was much higher in the early 1970's than in the late 1960's. Only _____% were approved in 196____, while _____% were approved in 197____.

Since at least 4.6% of our military applicants committed their offenses primarily because of their opposition to the Vietnam War, the much smaller percentage of those who applied for in-service conscientious objector status may indicate that many did not know such a remedy existed, had little hope their request would be approved, or feared repercussions for expressing their beliefs. In addition, some of our applicants were apparently misinformed about application criteria when they did inquire.



(Case #) From the time of his arrival at his Navy base, applicant consulted with medical, legal, and other officers on how to obtain a discharge for conscientious objection. He was told that the initiative for such a discharge would have to be taken by the Navy, so he would have to demonstrate that he was a conscientious objector. He then went AWOL to prove his beliefs. Following his conviction for that brief AWOL, he requested a discharge as a conscientious objector. His request was denied.

5. Assignment to Vietnam

During the height of the Vietnam War, our applicants were ordered to Vietnam about six months after entering the service. Just over half (51%) of our applicants received orders for Vietnam. Most complied with the orders, but many did not. Twenty-four percent of our applicants were discharged because of an AWOL offense they committed prior to departure for Vietnam.

(Case # 03584) Applicant received orders to report to Vietnam. While on leave before he had to report, he requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was 8 months pregnant and that he was an alien. His request was denied, and he went AWOL.

Once they arrived in Vietnam, our applicants were less likely to desert. They faced the risk of being stranded in a foreign nation without the legal documents necessary to permit their return. They also faced the risk of capture by the enemy. Finally, any desertion offense under combat conditions could be treated more harshly by military authorities. Only 3.4% of our applicants deserted from Vietnam, and one-third of those went AWOL from non-combat situations. In many cases, their reasons related to personal problems, often of a medical nature.

(Case #00423) 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. A doctor's assistant told him that the eye 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 to his inability to function in an infantry unit, applicant went AWOL.

2, Almost 90% of our applicants who were sent to Vietnam were assigned to combat situations. Some -- but not many -- actually deserted while serving in a combat assignment.

(Case # 3304) Applicant would not go into the field with his unit because he felt the new C.O. of his company was incompetent. He was getting nervous about going out on an operation in which the probability of enemy contact



was high. (His company was subsequently dropped onto a hill where they engaged the enemy in combat). 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 of self preservation." Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

Once a soldier arrived in Vietnam it was difficult for him to leave the country. He was permitted to return to the U.S. on emergency leave when appropriate. Also, he was offered several days of "R&R" (Rest and Relaxation) at a location removed from combat zones, and frequently outside of Vietnam. It was on these sojourns outside of Vietnam that some of our applicants departed AWOL.

Many of our applicants served with distinction in Vietnam. They fought hard and well, often displaying true heroism in the service of their country. Of our applicants who served in Vietnam, one in eight was wounded in action. One in twelve was awarded a Bronze Star for heroism in combat, and some even earned a Silver Star.

(Case #2065) While a medic in Vietnam, applicant (an American Indian) received the Bronz Star for heroism because of his actions during a night sweep operation. When his platoon came under intense evening fire, he moved through a mine field 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. In addition to his BronzeStar, he received the Army Commendation Medal with Valor Device, the Vietnam Service Medal with devices, the Vietnam Campaign Medal, and the Combat Medics Badge.

Others experienced severe psychological trauma from their combat experiences; some applicants turned to drugs to help them cope.

(Case #00188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared a brotherly relationship, was killed while awakening applicant to start his duty. He was mistaken for a Viet Cong and shot by one of his own men. This event was extremely traumatic to the applicant, who experienced nightmares. In an attempt to cope with this experience, he turned to the use of heroin. After becoming an addict, he went AWOL.



Still other applicants indicated that combat experience was a source of personal fulfillment.

(Case #0423) Applicant, who was drafted, was pleased by his assignment to Vietnam because of his confidence in his training and membership in a cohesive, elite unit.

In fact, almost one-half of our applicants who served in Vietnam had volunteered either for Vietnam service, for Combat action, or for an extended Vietnam tour. They enjoyed the close comradeship of combat situations and felt a sense of accomplishment from doing a difficult job well. Occasionally, an applicant indicated he went AWOL because of his inability to extend his tour in Vietnam.

(Case # 8232) While in Vietnam, applicant tried to extend his tour but his request was never answered. He was told much later that he would have to wait until he returned stateside, he was told that he could not return, so he went AWOL. He had derived satisfaction from his work in Vietnam because he was respected, and he found the atmosphere close and friendly.

Combat experience for some applicants also produced a sense of uneasiness about the cause for which they were fighting.

(Case #03697) Applicant was successfully pursuing his military career until he served in Cambodia assisting the Khmer Armed Forces. He began to experience internal conflicts over the legality and morality of Army operations in Cambodia. This reinforced his feelings and resulted in disillusionment.

Our Vietnam Veteran applicants frequently articulated severe readjustment problems upon returning to the United States. This "combat fatigue" or "Vietnam syndrome" was partly the result of the incessant stress of life in combat.

(Case #2892) After returning from two years in Vietnam, applicant felt that he was on the brink of a nervous breakdown. He told his commander that he was going home and could be located there, if desired. He then went AWOL from his duty station.

strike previous *David L. Miller*
Two-fifths of our Vietnam veteran applicants (11% of all military applicants) experienced severe personal problems as a result of their tour of duty. These problems were psychological (45%), medical (34%), legal (17%), financial (8%), or familial (5%). One third of their psychological and medical problems were permanent disabilities of some kind. They often complained that they had sought help, received none, and departed AWOL as a consequence.

(Case #2065) (This is a continuation of the case of the American Indian who received a Bronze Star for heroism). After applicant's return to the United States from Vietnam, he asked his commanding officer for permission to see a chaplain and a psychiatrist. He claimed that he was denied these rights, so he decided to see his own doctor.

(#2065) cont'd He was given a psychological examination and was referred to a VA hospital. After a month of care, he was transferred back to camp. He again sought psychiatric care, but could find none. Later, he was admitted to an Army hospital. One examining psychiatrist noted that he needed prompt and fairly intensive short-term psychiatric care to avert further complications of his war experience. His many offenses of AWOL were due to the fact that he felt a need for psychiatric treatment but was not receiving it.

Our Vietnam veteran applicants frequently complained that upon return to stateside duty, they encountered a training Army and the routine of peacetime duty lacking the satisfaction of the more demanding combat environment. Some adjustment problems may have resulted from their injuries.

(Case #08349) After his return from Vietnam, applicant was frustrated over his inability to perform his occupational speciality as a light vehicle driver due to his injuries. His work was limited to details and other menial and irregular activity that led him to feel "like the walls were closing in on me." He then went AWOL.

Unfortunately, other soldiers who had never seen combat experience were sometimes unfriendly to those who had, adding to the combat veterans' readjustment problems.

(Case #8145) While in Vietnam, applicant saw much combat action and received numerous decorations. He was an infantryman and armor crewman who served as a squad and team leader. He participated in six combat campaigns, completed two tours in Vietnam, and received the Bronze Stars for heroism. In one battle, he was wounded -- and all his fellow soldiers were killed. His highest rank was staff sergeant (E-6). Upon his return from Vietnam, he went AWOL because of harassment from fellow servicemen that he was only a "rice paddy NCO" who would not have his rank if not for the war.

Veterans of other wars usually came home as national heroes. The Vietnam veteran, however, was greeted coolly. Some of our applicants were disappointed by the unfriendly reception they were given by their friends and neighbors. Many Vietnam veterans, deeply committed to the cause for which they had been fighting, were unprepared to return home to the attitudes of Americans in the midst of controversy over the war.

(Case #) Applicant received a Bronze Star and Purple Heart in Vietnam. He wrote the following in his application for clemency: "While in Vietnam, I didn't notice much mental strain, but it was an entirely different story when I returned. I got depressed very easily, was very moody, and felt as if no one really cared that I served their country for them. And this was very hard to cope with, mainly because while I was in Vietnam I gave it 100%. I saw enough action for this life and possibly two or three more. I hope that someone understands what I was going through when I returned."

(Case # 8145) On his return from combat in Vietnam, applicant found it difficult to readjust to stateside duty. He was shocked by the civilian population's reaction to the war and got the feeling he had been "wasting his time."

6. AWOL Offenses:

By going AWOL, our applicants committed at least one of three specific military offenses: AWOL (Article 85, UCMJ), Desertion (Article 86, UCMJ), and Missing Movement (Article 87, UCMJ). Of the three, desertion was the most serious offense. To commit desertion, our applicants had to be convicted of departing with the intent to avoid hazardous duty or shirking important service (the most serious form of desertion), or absenting himself with intent to permanently remain away. Though the military service administratively classified most of our applicants as deserters, (usually because they were gone for periods in excess of 30 days), only 9.2% of our applicants were convicted of the offense of desertion. Desertion convictions were difficult to obtain because of the difficulty proving the intent element of the offense (e.g. intention to remain away permanently, etc.)

A soldier could be convicted of missing movement when he failed to accompany his unit aboard a ship or aircraft transporting them to a more strategic position. Only 0.9% of our applicants were convicted of missing movement.

The majority of our applicants - 90% - were convicted of AWOL. Almost one-fourth of our applicants sustained an AWOL conviction for failure to report for transportation to Vietnam. AWOL was the easiest form of unauthorized absence to prove and the lesser included offense of desertion. Hence, where the evidence did not establish the intent element of desertion, a military court could still return a finding of AWOL.

There were recognized defenses to the various charges of AWOL. However, the applicant had to establish credible evidence of a defense to avoid conviction once the government established a prima facie case. This was often difficult to do, and provoked some unusual explanations.

(Case #16332) Applicant states he was traveling across the Vietnamese countryside with a sergeant, when he and the sergeant were captured by the Viet Cong. He was a POW for two months before he finally escaped and returned 30 pounds lighter and in rags, to his unit. His unit commander did not believe his story, and his defense counsel advised him to plead guilty at his trial.

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Our military applicants went AWOL from different assignments, for different reasons, and under a variety of circumstances. As described earlier, 7% left from basic training, 10% from advanced individual training, 52% from other stateside duty, 24% because of assignment to Vietnam, 3.4% from Vietnam, and 1.3% from Vietnam leave. The remaining 2.3% went AWOL from overseas assignments in countries other than Vietnam.

As a criminal offense, AWOL is peculiar to the military. If a student leaves his school, he might be expelled. If an employee leaves his job, he might be fired and suffer from a loss of income. But if a serviceman leaves his post, he might not only be fired, but also criminally convicted, fined and imprisoned. These extra sanctions are necessary -- especially in wartime -- to maintain the level of military discipline vital to a well-functioning Armed Forces. Desertion in time of Congressionally-declared war carries a possible death penalty, and most of the offenses committed by our applicants could have brought them long periods of confinement. Such swift, certain, and severe penalties are necessary to deter military misconduct even in the face of enemy fire.

In light of this, why did all of our applicants go AWOL? Why did an estimated 500,000 soldiers go AWOL during the Vietnam War? Almost 4,000 of our applicants were Vietnam combat veterans, yet they risked -- and lost -- many privileges and veterans benefits as a result of their offenses.

Though the general public frequently assumed that many unauthorized absences during the Vietnam era were motivated by conscientious opposition to the war, and this was a factor motivating this program, only 4.6% of our military applicants went AWOL primarily because of an articulated opposition to the war.* An additional 1.8% went AWOL to avoid serving in combat.

* By coincidence, this 4.6% figure corresponds to the 4.6% of all cases in which our Board identified conscientious reasons (mitigating factor #10). It is very close to the ._% conscientious objection figure cited by the Defense Department's clemency program and the 3.6% finding of an earlier AWOL study.⁹

While another 9.7% left because they did not like the military; both reasons may have implied an unarticulated opposition to the war. Thus, at most, only 10% of our applicant's offenses fit the broadest possible definition of conscientious objection.

(Case #03285) Applicant decided he could not conscientiously remain in the Army and went to Canada where he worked in a civilian hospital. Prior to his discharge, applicant stated: "In being part of the Army, I am filled with guilt. That guilt comes from the death we bring. I am as guilty as the man who shoots the civilian in his village. My being part of the Army makes me just as guilty of war crimes as the offender."

A small but significant 1.8% of our applicants went AWOL because of post-combat psychological problems.

(Case #8887) Applicant received a Bad Conduct Discharge for an AWOL between 16 March and 28 November 1970. This AWOL was terminated by surrender in California. Applicant went AWOL because he was "disturbed and confused" upon returning from Vietnam. He described himself as "really weird, enjoying killing and stuff like that", and as being "restless". During the AWOL, he was totally committed to Christ and the ministry.

In some instances, an applicant's actions seemed beyond his reasonable control.

(Case #05233) Applicant participated in 17 combat operations in Vietnam. He was medically evacuated because of malaria and an acute drug-induced brain syndrome. He commenced his AWOL offenses shortly after he was released from the hospital. Since his discharge, applicant has either been institutionalized or under constant psychiatric supervision.

Approximately thirteen per cent of our applicants left the military alleging denied requests for hardship leave, broken promises for occupational assignments and improper enlistment practices, or other actions by their superiors which might have been perceived as unfair.

(Case #0751) Applicant enlisted for the specific purpose of learning aircraft maintenance, but instead was ordered to Artillery school. When he talked with his commanding officer about this, he was told that the Army needed him more as a fighting man.

(Case #4793) Applicant, a Marine Sergeant (E-5) with almost ten years of creditable service, requested an extension of his tour in Okinawa to permit him time to complete immigration paperwork for his Japanese wife and child. Several requests were denied.

Upon return to the United States, he again requested time, in the form of leave. He was unable to obtain leave for five months, until it was granted after he sought help from a senator. Applicant relates that his First Sergeant warned him, before he left on leave, that "he was going to make it as hard for him as he could" when he returned, because he had sought the assistance of a senator.

(Case #0649) Applicant enlisted in the Army for a term of three years, specifying a job preference for electronics. The recruiter informed him that the electronics field was full, but that if he accepted assignment to the medical corps he could change his job after entry onto active duty. Once on active duty, applicant was informed that his MOS could not be changed. He was unsuccessful in obtaining the help of his platoon sergeant, company commander and chaplain, so he left AWOL.

(Case #0269) Applicant states that his father, who had suffered for three years from cancer, committed suicide by hanging. His family's resources and morale had been severely strained by the father's illness and death. Applicant spent a period of time on emergency leave to take care of funeral arrangements and other matters. At the time, his mother was paralyzed in one arm and unable to work. Applicant sought a hardship discharge, but after three weeks of waiting his inquiries into the status of the application revealed that the paperwork had been lost. Applicant then departed AWOL.

Most of these violators were AFQT Category III or IV individuals, many of whom were only marginally fit for military service at the time of their enlistment.

(Case #14813) Applicant has a category IV AFQT score. He went AWOL because he was apparently unaware of or did not understand the Army drug abuse program. The corrections officer at the civilian prison where he is incarcerated believes that applicant's retardation, while borderline, makes it impossible for him to obey rules and regulations.

Sixteen percent committed their offenses because of personal reasons--usually medical or psychological problems. Half of their problems were related to alcohol or drugs.

(Case #01371) Applicant started drinking at age 13 and was an excessive user of alcohol. Awaiting court-martial for one AWOL offense, applicant escaped but voluntarily returned shortly thereafter. He claimed that his escape was partly the result of his intoxication from liquor smuggled in by another detainee. A psychiatrist described him as emotionally unstable, unfit for military service.

The bulk of our military applicants--41%--committed their offenses because of family problems. Sometimes these problems were severe; sometimes not.

(Case #00191) Applicant commenced his absence from a leave status because of his father's failing health and his mother's poor economic prospects. He had applied twice for hardship discharges before his offense. While applicant was AWOL, his father died of a stroke. His mother was left with a pension of \$22 a month; she was a polio victim and unable to work.

Finally, twelve percent went AWOL for reasons of immaturity, boredom, or just plain selfishness. These tended to be people who could not--or would not--adjust to military life.*

(Case #14392) As a youth, applicant experienced numerous conflicts with his parents and ran away from home on several occasions. He joined the Army because there was nothing else to do in the rural community in which he was raised. Applicant had difficulty adjusting to the regimentation of Army life, and he went AWOL four times.

Our typical applicant went AWOL three times; over four-fifths went AWOL more than once. AWOL offenders tended to be 19 or 20 when they committed their first offense, 20 or 21 when they committed their last offense.

Their first offense occurred between 1968-1970, and their last between 1969-1971. Typically, their last AWOL was their longest, lasting ___ months. At the time of their last AWOL, they had usually accumulated ___ to ___ months of creditable military service time; ___% had six months or more of creditable service, enough to qualify them for veterans benefits. Only 1.1% used any force to effect their escape from the military.

While AWOL, almost all of them (81%) were employed full-time. Only 8% were unemployed. Often they were working in jobs where they would have been fired, lost their union membership, or had their trade license revoked if their AWOL status had been known.

(Case #00230) During his AWOL, applicant found employment as a tile and carpet installer. He became a union member in that trade.

*This 12% figure is considerably less than the 28% of all cases in which our Board identified selfish and manipulative reasons (aggravating factor #5). The reason for this discrepancy is that many of the family problems cases involved such minor difficulties that we had to regard the AWOL offenses as a selfish neglect of military responsibilities.

(Case #08145) During his AWOL period, applicant worked as a carpenter to support his sister's family. Later, he worked as a security guard.

Over three-quarters (76%) either returned to military control immediately or settled in their home towns under their own names. Most carried on life just as they had before they joined the service. Another 13% settled openly in the United States, and 6% settled in the foreign country where they had been assigned (often Germany). Only 5% became fugitives: 2% in Canada, 2% in other foreign countries (often Sweden), and 1% in the United States.

(Case #00847) Applicant went back to his old job after going AWOL. He never changed his name or tried to conceal his identity.

Slightly over half (52%) of our applicants were arrested for their last AWOL offenses. Some efforts were made to apprehend AWOL soldiers, but those efforts were startling ineffective. Normally, an AWOL offender's commanding officer sent a letter to his address of record within ten days of his absence. He also completed a form, "Deserter Wanted by the Armed Forces" which went to the military police, the FBI, and eventually the police in the soldier's home of record. Either the local police never received their copies, or they were unwilling to arrest AWOL offenders. We had countless applicants who lived openly at home for years until they surrendered or were apprehended by coincidence (for example, through a routine police check after running a red light). In some cases, the military itself did not seem that interested in locating AWOL soldiers.

(Case #03697) Applicant had a duty assignment at a military office in Germany. He experienced a great deal of tension, frustration, and restlessness, culminating in a feeling one day that he "couldn't face" going to work. He remained at his off-post home during his AWOL. His office made no effort to contact his wife during the entire period of his AWOL. He drank heavily, became anxiety-ridden, and concealed his AWOL status from his wife by feigning to go to work each morning. He was eventually apprehended when his wife, concerned over his strange behavior, called his office to ask his co-workers if they knew what was wrong with him. They had not seen him in months.

Most apprehended AWOL offenders were arrested by civilian police. They were kept in local jails until they could be delivered to a central "pick-up" facility, often a period of several days. Military police were usually available to AWOL soldiers only in the immediate vicinity of military bases.

7. Encounters with the Military Justice System

Upon returning to military control, our applicants had to face some form of discipline. Some (14%) faced other charges in addition to AWOL or Desertion. In all cases, their last AWOL offenses factored in their discharge under other than honorable conditions. Hundreds of thousands of other AWOL offenders were more fortunate. They received more lenient treatment and later were discharged under honorable conditions. About twenty-two percent of our applicants had records reflecting at least one period of unauthorized absence for which no punishment was indicated.

Most of the Army soldiers who were AWOL for over thirty days were processed, upon their return to military control, through a Personnel Control Facility (PCF) formerly known as Special Processing Detachments. These were units with their own billets and chain of command. It was from this command structure that the decision was made, in appropriate cases, to confine returning offenders. Life at these facilities was not always easy for our applicants. While there were some opportunities for simple tasks, boredom, anxiety and petty crime were commonplace, making life difficult.

(Case #08349) Applicant voluntarily surrendered himself to an Army post near his home town. He found conditions in the personnel control facility intolerable due to the absence of regular work, the prevalence of crime, and the continued lack of regular pay. He went AWOL again one week later.

While in the PCF, our applicants were processed for administrative or court-martial action. At the outset, they were briefed by a JAG officer (a military attorney) who advised them generally what disciplinary actions to expect. They were told about their opportunity to request a discharge in lieu of court-martial.

Some first offenders were quickly re-integrated into military life.

Others faced more uncertainty about their fates. They had to decide, in most instances, whether to proceed to a trial or accept an administrative

discharge. The decision to go to trial usually carried the risks of conviction, a period of confinement, and perhaps a punitive discharge. Their stay in the PCF or pre-trial confinement might be lengthened due to delays essential to attorneys preparing their cases. On the other hand, after service of confinement, they would be able to return to active duty, and serve out their enlistment which would be extended by the equivalent of time they were AWOL and in confinement. Even if a punitive discharge had been adjudged, a return to active duty was frequently permitted as a reward for having demonstrated rehabilitative potential while confined. If no further problems developed, they would separate from the service with a discharge under honorable conditions and entitlement to many veterans benefits.

The decision to accept an administrative discharge in lieu of trial amounted to a waiver of trial, a virtual admission of guilt, and a discharge under less than honorable conditions. However, the administrative process was speedier, so they could return to their personal and family problems; they avoided confinement, and they did not have to risk a return to military life with a conviction that might set them apart from other soldiers and lead to further disciplinary problems. Though they were acquiring a stigmatic discharge (which many felt as a consequence of their experiences while AWOL, would not be a major liability) they were avoiding a federal criminal conviction.

Thus, the choices for the average 18 to 20 year old were very difficult. Many of those who chose the administrative discharge route did so to get away from the PCF or further pre-trial confinement. Others found their return to military control too difficult an adjustment and departed AWOL again, putting the decision off until they again returned to military control.

If our applicant had established what his commander felt was a pattern of misconduct,* the commander might decide that he was no longer fit for active duty. The commander would then notify the soldier of his proposed action and the soldier would have to fight the action by demanding a board of officers. Otherwise he would waive his right to such a board. If he asked for the Board, the convening authority would then detail at least three officers to hear the evidence, as presented by the government, and as rebutted by the respondent and his detailed military defense counsel. The Board was then authorized to make a finding that the soldier was either unfit or unsuitable for further military duty, if they believed he should be discharged. They could also find that he was suitable for retention. If they found a basis for discharge, they were then obligated to recommend an appropriate discharge classification. If they found the soldier unsuitable, the normal recommendation to the convening authority would be discharge under honorable conditions. However, while an honorable classification was also possible if unfitness were found, the usual result in such a case was to recommend an undesirable discharge. Once the Board made its findings, the convening authority had to implement the Board's decision, or take some other action as provided by the service regulations. Though the convening authority in the Army may make no disposition more severe than rendered by the Board, that is not true in the Air Force.

The line between the unsuitability discharge and the unfitness discharge was often as fine one,** lacking clear distinction; yet the choice between them affected an AWOL offender's reputation and eligibility for veterans benefits for the rest of his life.

* DOD Directive 1332114 provides for early separations for soldiers frequently involved in disciplinary problems or drug abuse. Overt homosexuality may also cause separation for unfitness in some services, as well as established pattern of shirking and unsanitary habits (generally repetitive VD).

** The rule-of-thumb often applied is that an Unsuitability Discharge went to a soldier "who would if he could, but he can't" -- in other words, to someone with a psychological problem or inaptitude. Also included is bed wetting, and financial irresponsibility. An Unfitness Discharge went to a soldier with more of an attitude problem, "who could if he would, but he won't."

(Case # 8328) Applicant was under consideration for an unsuitability discharge. A military psychiatrist indicated that he suffered from a character and behavior disorder characterized by "impulsive, escape-type behavior" and "unresolved emotional needs marked by evasion of responsibility". Because of this diagnosis of a severe character and behavior disorder, he expected a General Discharge. Shortly before his discharge, a racial disruption occurred in his company, in which applicant took no part. This disruption led to the rescission of a lenient discharge policy, and applicant was given an Undesirable Discharge for unfitness.

The more common administrative procedure, accounting for the discharge of 45% of our applicants, was the "For the Good of the Service" discharge, in lieu of court-martial,* which was granted only at the request of a soldier facing trial for an offense for which a punitive discharge could be adjudged. Until recently, it did not require an admission of guilt -- but it did require that the AWOL offender waive his right to court-martial and acknowledge his willingness to accept the disabilities of a discharge under other than honorable conditions (e.g. undesirable discharge). Although none of our applicants were so fortunate, a few AWOL offenders received General Discharges through "Good of the Service" proceedings.

Our applicants did not have a right to a discharge in lieu of court-martial. They could only make a request. To qualify, for the discharge, the AWOL for which the applicant was facing trial had to range between 30 days and a year and a half, depending on the standards set by the convening authority where the applicant returned to military control.

(Case # 0664) Applicant was absent without leave twice for a total of almost one year and two months. He applied twice for a discharge in lieu of court-martial for his AWOL's, but both requests were denied.

Occasionally, our applicants indicate they went AWOL specifically to qualify for a "Chapter 10" discharge.

(Case #15528) After his third AWOL, applicant requested a discharge in lieu of court-martial, which was denied. He then went AWOL three more times. He told an interviewing officer after his 6th AWOL that he had gone AWOL in order to qualify for a Chapter 10 discharge.

* This is commonly called the "Chapter 10" discharge within the Army; referring to AR635-200 Chapter 10.

AWOL offenders who qualified for a discharge in lieu of trial rarely chose to a face court-martial. The desire was often strong to leave the PCF or get out of pre-trial confinement. If a soldier was granted a Chapter 10 discharge, he was usually allowed to leave the PCF or confinement within one week after his application. One to two months later, he was given his discharge. Occasionally, our applicants indicate they went home expecting to receive a General Discharge, only to get an Undesirable Discharge.*

Whether one of our applicants was better off -- or worse off -- for receiving an administrative discharge in lieu of trial is hard to say. On the one hand, it prevented him from facing a court-martial and the risk of a punitive discharge and imprisonment. On the other hand, he relinquished a full opportunity to defend the charges against him. He might have had been acquitted or had his charges dropped. He might also have been convicted but not discharged, giving him another chance to earn an Honorable Discharge. Even if convicted and a discharge adjudged, he might have obtained a suspension, and ultimately a remission, of the discharge after a period of good conducts.

Our applicants who received discharges in lieu of trail generally were those whose last AWOL ended between 1971 and 1973. The likelihood of receiving a discharge was greater if their AWOL had been no more than one year in length.

* While it was a permissible practice in the Army at some installations prior to 197 for an accused to condition his request for discharge in lieu of trial upon his being granted a General Discharge under honorable conditions, they were rarely granted. Thus, in order to speed the discharge application, many soldiers requested discharge, acknowledged that they might be given a UD, but requested that they be furnished a GD in a separate statement. This may account for some misunderstanding by many applicants as to the discharge they would receive. See case #8349 above.

The following two tables relate the effects of year of discharge and length of last AWOL on the type of punishment which our applicants received.

YEAR OF DISCHARGE

	1966	1967	1968	1969	1970	1971	1972	1973
UD - in lieu of trial	3%	1%	11%	37%	34%	67%	62%	56%
UD - Unfitness	26%	25%	27%	19%	10%	12%	6%	12%
Punitive Discharge (court-martial)	71%	74%	62%	54%	56%	21%	32%	32%

LENGHT OF AWOL

	0-6 Months	7-12 Months	over 12 months
UD - Discharge in lieu of trial	50%	45%	36%
UD - Unfitness	21%	10%	7%
Punitive Discharge (court-Martial)	29%	45%	57%

It is worth noting that 51% of our AFQT Category IV applicants received discharges in lieu of trial compared to 44% of our Category II and III soldiers, while only 32% of our Category I servicemen were ousted by that process. Blacks were about equally as likely as whites to receive Chapter 10 discharges (46% versus 44%), but Spanish-speaking soldiers received a very disproportionate share (66%).

Some of our applicants requested -- or the military insisted -- that they face court-martial for their offenses. In a court-martial, they had greater opportunity to deny or explain all charges brought against them, with benefit of counsel and with full advance knowledge of the prosecution's case. They also faced the threat of a punitive discharge and imprisonment. An accused soldier enjoyed at least as many rights at trial as an accused civilian. Usually, his court-martial took place very promptly, limiting pre-trial delays (and therefore, confinement or residence at the PCF) to two or three months at most.

There were three forms of court-martial. The Summary Court-Martial consisted of a hearing officer (summary court officer) who called witnesses for the prosecution and defense, rendered a verdict, and adjudged sentence. The summary court adjudged no sentence greater than confinement at hard labor (and then only if the accused was in pay grade E-4 and below) for one month, hard labor without confinement for 45 days, reduction to the lowest enlisted pay grade (except soldier's in grade E-5 and above could be reduced only to the next inferior pay grade), and forfeiture of two-thirds of one month's pay. After 197 no confinement could be adjudged unless the accused ^{was} represented by counsel (as a consequence of the ruling by the Supreme Court in Argisinger v. United States). No transcript of the trial was kept and there was no judicial review. However, a summary court never sat in judgement without the express consent of the accused,

who could refuse the court and leave to the convening authority the decision whether to refer the charges to a higher court. Altogether, 16% of our applicants faced a summary court-martial at least once.

The Special Court, experienced by 54% of our applicants was similar in composition and procedure to the General Court faced by 13% of our applicants. An accused facing a General or Special Court was tried by a court of officers (jury) unless the accused specifically requested that at least one-third of the court be enlisted members (usually of higher rank). A military judge, since 1969, normally presided over the trial, and the accused was entitled to request that the military judge, alone, hear the case and adjudge sentence. In the absence of a military judge, the President of the court of members (the senior member) presided over the trial.

The accused was entitled to legally qualified defense counsel after 1969. The service detailed a defense counsel to the accused, and permitted him any counsel he requested by name, provided the attorney was "reasonably available". Neither of these counsel was at the expense of the accused. The accused could also have his own civilian attorney. It was not uncommon for the defendant at a Special or General court to have more than one attorney as counsel, often at no expense to him.

The rules of evidence were followed and a verbatim record of trial was required ^{IF} an adjudged punitive discharge was to be affirmed on appeal. Otherwise a summarized record was kept at special courts-martial.

The Special Court could adjudge no sentence greater than confinement at hard labor for six months, forfeiture of two-thirds pay for six months, reduction to grade E-1, and a Bad Conduct Discharge. As the Army did not routinely order a verbatim record be kept, the Bad Conduct Discharge was adjudged only where the convening authority expressly authorized the Special Court to adjudge a punitive discharge.

The General Court could adjudge any sentence, including death and life imprisonment as authorized by the Uniform Code of Military Justice or the Table of Maximum Punishment, as appropriate. It also adjudged the Dishonorable Discharge in addition to the Bad Conduct Discharge, although total forfeiture of pay and allowances were also ordered.

Altogether, 40% of our applicants stood court-martial for their last AWOL offense.* About _____ of them pled "not guilty." All were convicted and all but a few received punitive discharges. They were further sentenced to pay forfeitures, reduction-in-rank, and imprisonment for typically five to eight months. Their sentences were often reduced through the automatic review of the Court of Military Review. Our court-martialed applicants' final sentences averaged five months, with only 2% having to serve more than one year in prison.

Our applicants who were punitively discharged had their cases reviewed for errors of law by a JAG officer responsible to the court-martial convening authority. They were further reviewed for errors of fact or law by a Court of Military Review (previously known as Boards of Review) and occasionally by the Court of Military Appeals.

Few of our applicants voiced objection to the fairness of their trials, though some complaints were heard.

(Case #00423) Applicant, a Vietnam veteran, sustained some sort of eye injury (probably in Vietnam) which caused his retina to become detached. He is now nearly blind in one eye. At trial, his counsel attempted to introduce the testimony of his attending ophthalmologist to prove that he absented himself to obtain medical treatment, not to desert. The military judge refused to admit the ophthalmologist's testimony, in the absence of independent evidence of its relevancy. His decision was upheld on appeal.

Sentences under 30 days were usually served at the post stockade. Convicted but undischarged AWOL offenders sentenced to more than one month of imprisonment were transferred to the Army Retraining Brigade at Fort Riley, Kansas. Efforts were made to rehabilitate the offender and enable him to complete his military service successfully. However, many were habitual offenders. For others, military

* The percentage tallies for the three types of courts-martial add up to more than 40% because many of our applicants faced court-martial for more than one AWOL offense.

life became even more difficult after confinement.

(Case #356) As the result of a two-month AWOL, applicant was convicted by a summary court-martial and sentenced to confinement. After his release and return to his former unit, he was constantly harrassed, ridiculed, and assigned to demeaning work. He found this intolerable and he went AWOL again.

Those who were pending punitive discharges and had received sentences of over 30 days were sent to the Disciplinary Barracks at Fort Leavenworth, Kansas. Approximately 170 soldiers were still serving their terms when the President's Clemency Program was announced. They were all released upon their application for clemency.

Effects of the Bad Discharge

All of our applicants had one experience in common: they all received bad discharges. Sixteen percent received Undesirable Discharges for Unfitness and 45% received Undesirable Discharges in lieu of court-martial. Those who faced court-martial and received punitive discharges received Bad Conduct Discharges (38%) or Dishonorable Discharges (2%). In some states a court-martial conviction, particularly if a discharge or confinement over one year were adjudged, may impose the same disabilities as a felony conviction in the civilian courts. Thus, some of our applicants may have jeopardized their voting and property rights and the opportunity to obtain certain licenses by virtue of their punitive discharge.

What was more important to our applicants was the effect of discharge on their ability to get veterans' benefits and obtain a job. Some were caught in a downward spiral: they could not afford to train themselves for a skilled job without veterans' benefits. Employers would not hire them for other jobs because of their discharge. They then could not receive unemployment compensation because of their discharge.

(Case #08062) Following his discharge, applicant sought employment in the area of his military training as a finance clerk. He wanted to study to become a CPA, but was financially unable

without benefit of the GI Bill--from whose benefits he was barred. Finally he found employment as a truck driver for small trucking firms and is now earning \$70 per week. He could have earned more with the larger trucking companies but they refused to hire him because of his discharge.

(Case #08232) Applicant, a Vietnam veteran, was unable to find work for his first month after discharge because everyone insisted upon knowing his discharge. He finally found work as a painter but was laid off five months later. Because of his discharge he was denied unemployment benefits.

A number of studies have shown that employers discriminate against former servicemen who do not hold Honorable Discharges. About 40% discriminate against General Discharges, 60% against Undesirable Discharges and 70% against Bad Conduct or Dishonorable Discharges. Many employers will not even consider an application from anyone with less than an Honorable Discharge.

Before applicants could submit to any proceeding which might result in undesirable discharge, each was warned to the effect:

"I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued me. I further understand that, as a result of the issuance of an undesirable discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both federal and state laws and that I may expect to encounter substantial prejudice in civilian life."

Civilian courts have taken judicial notice of the less-than-honorable discharge, calling them

"punitive in nature, since it stigmatizes a serviceman's reputation, impedes his ability to gain employment and is in life, if not in law, prima facie evidence against a serviceman's character, patriotism or loyalty."

Stapp v. Resor, 314 F. Supp. _____; accord, Sofranoff v. U.S., 165 Ct. Cl. 470 (1964), Glidden v. U.S., 185 Ct. Cl. 515 (1968), Bland v. Connally, 293 F. 2d. 858 (____ Cir 1961)

The injury caused by the less-than-honorable discharge is particularly acute in the case of our applicants who served more than enough time to have earned veterans' benefits, and who obtained Honorable Discharges for the purpose of re-enlisting, but who received bad discharges in their last period of enlistment. These soldiers were often denied benefits just as the soldier given the stigmatizing discharge prior to completing his first enlistment.

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|---------------|---|
| (Case #16332) | Applicant had four years, four months creditable service. |
| (Case #4793) | Applicant had 9 years, 10 months, 15 days creditable service. |
| (Case #0456) | Applicant had 8 years, 7 months, 20 days creditable service. |

IV

D



IV. PCB APPLICANTS

D. CONCLUSION

D-Conclusion

An estimated 123,000 persons could have applied for clemency. Only 22,300 did apply. Who were the 100,000 who did not? Why did they fail to apply? What happens to them now?

Who Were They?

The following table identifies non-applicants in a very general sense:

<u>Clemency Program</u>	<u>Type of Applicants</u>	<u>Percentage of Non -Applicants</u>	<u>Total Number of Non-Applicants</u>
PCB	Military - UD	89%	66,600
PCB	Military -BCD/DD	78%	19,400
PCB	Convicted civilians	77%	6,700
DOD	Military absentees	47%	3,800
DOJ	Fugitive civilians	84%	3,800
Total -----		82%	100,400

We know little more about their characteristics than what this table shows. Discharged servicemen with Undesirable Discharges were the least likely to apply, in terms of percentage and total numbers. This is probably attributable to the fact that we mailed application materials to eligible persons with punitive (BCD/DD) discharges, but were unable to do so for those with Undesirable Discharge's.

The Department of Defense had access to the military records of its eligible non-applicants. Using these records, it could make comparisons between its applicants and non-applicants. In most ways, they were

alike--family background, AFQT score education, type of offense, circumstances of offense, and so forth. Only a few clear differences could be found. Non-applicants committed their offenses earlier in the War, they were older, and they were more likely to be married. This implies that many may not have applied because their lives are settled, with their discharges more a matter of past than present concern.

Why did they Fail to Apply?

We can identify five reasons why eligible persons did not apply for clemency. We have listed them below in order of the significance we attribute to each of them:

Misunderstanding about eligibility criteria. Despite our public information campaign, many eligible persons may never have realized that they could apply for clemency.

Misunderstanding about the offerings of the program. Many prospective applicants may have been concerned about the usefulness of a Clemency Discharge. Others may not have known about the Presidential pardons given to all applicants to our Board -- or they may not have realized that our applicants were asked to perform an average of only three months of alternative service.

Settled status. Others may not have cared about the kind of discharge they had, or they may have been concerned that their application would have made their discharge public knowledge.

Inability or unwillingness to perform alternative service.

Some individuals might have feared that if they quit their jobs to perform alternative service, they would not get them back later. Many fugitives in Canada had jobs and homes there, with children in school, so they might have seen two years of alternative service as more of a disruption than they were willing to bear.

General distrust of government. Unfortunately, some may not have applied because they were afraid that, somehow, they would only get in trouble by surfacing and applying for clemency. Some might have been unsuccessful in pursuing other appeals, despairing of any hope that a new appeal would be of any help.

Opposition to the program. Some might have felt, for reasons of conscience, that only unconditional amnesty would be an acceptable basis for them to make peace with the government.

What Happens to Them Now?

Civilians convicted of draft offenses and former servicemen discharged for AWOL offenses will have to live with the stigma of a bad record. They still have the same opportunities for appeal that existed before the President's program -- principally through the United States Pardon Attorney and the military Discharge Review Boards -- but their prospects for relief are realistically remote.

Military absentees still in fugitive status can surrender themselves to civilian or military authorities. They still face the possibility

of court-martial, but it is possible that many will quickly receive an Undesirable Discharge and be sent home.

Fugitive draft offenders can first inquire to learn whether they are on the Department of Justice's list of 4522 indictments. If they are not, they are free from any further threat of prosecution. If their names are on that list, they can surrender to the United States Attorney in the district where they committed their draft offense. They will then stand trial for their offenses. Although there have been exceptions, convicted draft offenders have been recently sentenced to 24 months of alternative service and no imprisonment. But they still have a felony conviction, involving a stigma and a loss of civil rights.

We encourage those who did not apply to do what they can to settle their score with the government. Likewise, we encourage military and civilian authorities to be reasonably clement with them.