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The enclosed is the very-near-final version of the executive summary and report, minus appendices, figures, and full-page tables. Chapters 5 and 8 and the summary have had some errors corrected since this was prepared. Let's hope that there are no further changes.

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SUMMARY

1. Introduction

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

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

2. The President's Clemency Program

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

to 24 months of alternative service in the national interest, under the supervision of the Selective Service System.

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

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

By directing that the military services upgrade bad discharges, substituting Clemency Discharges in their place, the President wanted to insure equal employment opportunities for those who received clemency. As a "neutral" discharge, the Clemency Discharge appears to be working: a recent survey of large national employers and local (Pennsylvania) employers found that they view it as almost identical to a General Discharge under honorable conditions and much better than an Undesirable Discharge under other-than-honorable conditions.

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

Altogether, 21,729 eligible persons applied for clemency.

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

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

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

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

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

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

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

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

What happens next to those who did not apply? The 8,300 who are still fugitives should surrender to authorities. While they are likely to receive a bad discharge or felony conviction, they will end their fugitive status and will probably not be sentenced to imprisonment. The 91,500 who have already been punished can apply to the Pardon Attorney in the Department of Justice or to the appropriate military discharge review boards, avenues of relief which are not related to the President's clemency program and which are not affected by the program's end.

3. Applicants to the Presidential Clemency Board

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Conscription is selective. Only nine percent of all draft-age men served in Vietnam. Less than two percent ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred--were convicted or remained charged with these offenses at the start of the clemency program.

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

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

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

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

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Unlike the civilian applicants, the vast majority of military applicants were not articulate, well-educated, or motivated explicitly by opposition to the war. Almost none had applied for a conscientious objector exemption before

entering the service, and less than five percent committed their AWOL offenses because of opposition to the war. Most grew up in broken homes, with parents struggling to cope with a low income. Roughly one in five were black, and 3.5% were Spanish-speaking. Despite an average IQ of 98, over three-quarters dropped out of high school before entering military service at the age of 17 or 18. Almost one in three were tested at below the 30th percentile of intelligence (Category IV on the Armed Forces Qualifying Test), making them only marginally qualified for military service.

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

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

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

The bad discharges have seriously affected the current employment status of military applicants. Seventeen percent were unemployed at the time of their clemency applications, whereas only eight percent were unemployed during their last AWOL offenses. Another seven percent were incarcerated for civilian felony offenses at the time the program started. Twelve percent had been convicted for at least one civilian felony offense sometime in their lives.

4. Procedural and Substantive Rules

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

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

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

Case dispositions varied little from week to week, especially after our basic policy decisions had been made. During our first six months, we decided 500 cases, recommending outright pardons (without alternative service) to 46% of all cases, denial of clemency to three percent, and conditional clemency with alternative service to the remainder. During our latter six months, we decided 14,000

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more cases, recommending outright pardons to 44%, denial of clemency to six percent, and alternative service to the remainder.

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

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

Our final list of **aggravating factors** consisted of the following:

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

Our final list of mitigating factors consisted of the following:

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

5. Case Dispositions

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

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

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

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

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disabled veterans for medical benefits. We made upgrade recommendations in about eighty cases, of which the following two are typical:

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

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

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

(Case 6) This military applicant would not go into the field with his unit, because he felt that the new commanding officer of his company was incompetent. He was getting nervous about going out on an operation; there is evidence that everyone believed that there was a good likelihood of enemy contact. He asked to remain in the rear, but his request was denied. Consequently, he left the company area because, in the words of his chaplain, "the threat of death caused him to exercise his right to self-preservation." His company was subsequently dropped onto a hill, where it engaged the enemy in combat. Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

We recommended that the President deny clemency in the above case, but other cases of AWOL in Vietnam involved strong mitigating factors. Often, combat wounds or the psychological effects of combat led to AWOL offenses. For example, we recommended an outright pardon in the following case:

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

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

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

Perhaps our most difficult and disputed cases involved applicants who had been convicted of unrelated civilian felony offenses, but who had strong mitigating factors applicable to their case. Some Board members argued that this was a program of clemency for Vietnam-related offenses, requiring the Board to disregard other, unrelated convictions. Others argued that granting clemency to convicted felons would cheapen the clemency grants. The majority of the Board took the middle view--that a felony conviction would be viewed as a highly aggravating factor, but each case sould be decided on its total facts, in accordance with the President's policy of case-by-case review. Even so, 42% of the applicants with other convictions were denied clemency because of the serious nature of their offenses or because of the absence of strong mitigating factors.

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

(Case 9) This applicant volunteered for the Special Forces after his first year in the Army. He re-enlisted to effect a transfer to Vietnam, where he served as a parachute rigger and earned excellent conduct and proficiency ratings. Altogether, he served for 18 months in Vietnam and over three years in the Army, with two Honorable Discharges for re-enlistment purposes. His AWOL offenses totalled 29 days, did not occur until after his return from Vietnam, and were attributed to his problems with alcohol. After his Undesirable Discharge in lieu of court-martial, he was convicted of stealing a television set and served six months in prison. He was recently paroled.

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

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

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

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

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In each of the above three cases, the Clemency Board recommended that the President recommend an outright pardon for the absence offenses. Obviously, we had no jurisidiction to recommend clemency for the unrelated convictions.

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

TABLE 2: CLEMENCY BOARD RECOMMENDATIONS: CIVILIAN CASES

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

TABLE 3: CLEMENCY BOARD RECOMMENDATIONS: MILITARY CASES

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

6. Management Process

During the first months of the Board's existence, we experienced little difficulty in organizing our work and reviewing our small number of cases. However, after the late winter flood of applications, we were faced with a seemingly impossible task. Through mid-April, the original nine-member Board had heard 500 cases. To meet the President's deadline of September 15, we had to experience a 40-fold increase in our case resolution rate. We met that deadline--to the day--with the Board deciding every one of the 14,514 cases for which we had enough information. After September 15, 1975, about 1,000 additional cases with partial or recently arriving files were referred to the Department of Justice for action in accordance with Board precedents.

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Meeting the President's deadline would have been impossible without a competent and dedicated staff. We and our staff emerged from this process with an experience in crisis management which we think may be useful to managers of comparable entities in the future. The senior staff developed solutions to management problems which enabled us to act upon over a thousand cases per week. At the same time, we maintained high standards of quality and integrity in our legal process. All policy decisions were made by the Board and implemented by the staff. Having to manage an organization which mushroomed from 100 to 600 employees during a six-week period, it is remarkable that our process involved as little confusion as it did.

7. Historical Perspective

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

8. Conclusions

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

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

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While we are confident that history will regard this program as a success, much of the work remains unfinished. As of September 1975, only a very small percentage of our applicants have as yet been required to contact Selective Service to begin performing alternative service. Of the 52% of our applicants who received conditional clemency, three quarters were assigned six months or less of alternative service. We hope that most will complete this assignment and receive clemency. The responsibility for implementing the alternative service portion of the program in a fair and flexible manner, fully in accord with the clemency spirit of the President's program, rests with the Selective Service System. The Clemency Board has recommended to Selective Service that individuals in the Clemency Board program be able to fulfill their alternative service by performing unpaid work in the national interest for 16 hours per week for the designated period--three or six months in most cases. Selective Service has implemented part of this recommendation, allowing alternative service to be completed through 20 hours per week of unpaid work. This part-time work must be stretched out for longer than the designated three or six month period.

We are pleased that the United States Pardon Attorney, entrusted with the carry-over responsibility for our program, has applied the policies and spirit of the Clemency Board. Likewise, we hope that other government agencies which will later come in contact with clemency recipients--especially the Veterans Administration and the discharge review boards of the Armed Forces--will deal with them as clemently as their responsibilities permit.

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

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

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

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

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

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To the members of the Presidential Clemency Board, the President's program assumed a special meaning. We came to the Board as men and women whose views reflected the full

spectrum of public opinion on the war and on the question of amnesty. As we discussed the issues, a consensus began to emerge. We came to see the President's program as more than mere compromise. It was an appropriate and fair solution to a very difficult problem.

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

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

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

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

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His fourth principle was that he would offer **conditional, not unconditional, clemency.** Eligible persons had to apply to the program for their cases to be

considered. Also, most applicants would have to earn clemency through performance of several months of alternative service in the national interest. They still owed debts of service to their country. Performance of that service was the prerequisite for clemency.

Fifth, he decided that this was to be a **program of definite not indefinite, length.** There would be an application deadline, giving everyone more than four months' time from the program's inception to apply--a deadline later extended by two months. This would permit all cases to be decided within one year, and -- even more important -- it would put an end to the amnesty debate. He hoped that reconciliation among draft resisters, deserters, and their neighbors would take place as quickly as possible. Altogether, 21,729 eligible persons applied for clemency.

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

During our twelve months of existence, the Presidential Clemency Board decided 14,514 cases. We tried to apply the spirit of these principles to every case. In this report, we explain what actions we took, what we learned about applicants, and what we think we accomplished. Where possible, we also try to put the President's entire clemency program in some perspective.

Chapter 2 consists of a discussion of how each of the President's six principles was implemented. In Chapter 3, we describe what we learned about the experiences of the civilian and military applicants to the Clemency Board. We discuss our procedural and substantive rules in some detail in Chapter 4, followed by an analysis of our case recommendations in Chapter 5. In Chapter 6, we describe how we managed what was often a "crisis" operation. In Chapter 7, we try to put the President's program into an historical perspective through a comparative analysis of other acts of executive clemency in American history. The report closes with a discussion in Chapter 8 of what we think the President's program accomplished. Illustrating this discussion are excerpts from actual Clemency Board cases, plus statistics from a comprehensive survey we conducted from the case summaries of almost 1,500 applicants. Some particularly illustrative cases are presented in more than one chapter.

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

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

Overshadowing the political consequences of the war were the personal tragedies. Thousands of American families lost their loved ones. Untold hundreds of thousands will bear physical and psychological scars for the remainder of their lives. Nothing can ever be done to compensate for the supreme sacrifices of those who died or lost their loved ones.

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

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Shortly after assuming office, President Ford sensed the need to "bind the Nation's wounds and to heal the scars of divisiveness."[1] As one of his first initiatives as President, he created the clemency program. The President believed that "in furtherance of our national commitment to justice and mercy," it was time to achieve a national "reconciliation" with the greatest degree of public

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

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

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

On September 16, 1974, the President appointed nine persons to this Board. Former United States Senator Charles E. Goodell was designated as Chairman. Beginning in September, the Board met on a regular basis in Washington, D.C. As the number of applications swelled from 860 in early January to 21,500 by the end of March, it became apparent that the nine original Board members and the initial staff of less than 100 could not complete the Board's work within the twelve-month deadline set by the President. In May 1975, the President expanded the Board to eighteen members and authorized a dramatic staff expansion to complete the work on time.

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

All Clemency Board members were aware that the President's program had to be implemented carefully to avoid having a serious impact on military discipline and to avoid

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

B. A Limited, Not Universal, Program

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

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

The President's definition of those eligible for clemency was phrased in terms of offenses committed, not in terms of the reasons for the offense. The President extended this clemency offer to veterans who went AWOL (absent without leave) to find medical assistance, to treat their combat wounds, to cope with readjustment problems after returning from Vietnam, or to support families forced to go on welfare. Likewise, he extended it to civilians from disadvantaged backgrounds whose ignorance and itinerancy led to their failure to keep their draft boards informed of their whereabouts. In the thousands of cases we reviewed, we found that the list of victims of the Vietnam War was of much greater variety than we had originally thought.

Eligibility Criteria for the Program

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

The eligibility tests set by the President no doubt excluded some fugitives, convicted offenders, and discharged servicemen whose offenses were motivated by their opposition to the war. For example, there were a few military applicants who, out of conscientious objection to the war, refused to report to Vietnam. Instead of going AWOL, these men faced court-martial for willful disobedience of lawful order. Had they gone AWOL, they could have applied for clemency; because they remained on their bases and accepted the punishment for their actions, they still have their bad discharges. Also, persons convicted of or charged with other Selective Services offenses, such as draft card mutilation or aiding and abetting draft evasion, were ineligible for clemency.

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

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Eligibility for the Presidential Clemency Board

Applicants eligible to apply to our Board included only those who had been convicted or punished for the above offenses.[9] For a civilian to be eligible, he must have been

convicted of one of the Selective Service violations listed above. For a former serviceman to be eligible, he must have received an Undesirable, Bad Conduct, or Dishonorable Discharge as a consequence of his absence offenses. Anyone discharged with either an Honorable or a General Discharge was not eligible.

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

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

The military cases presented difficult questions of interpretation. For example: "The Board...shall consider the case of persons who...have received punitive or undesirable discharges as a consequence of violations of Articles 85, 86, or 87...."[12] The phrase "as a consequence of" gave us particular difficulty. We decided that the phrase did not mean "as a consequence of" an AWOL only. In many cases, individuals had been administratively discharged for unfitness or frequent involvement with authorities based on a pattern of offenses, including AWOLs, none of which warranted a court-martial. The AWOL had to be viewed as a contributing factor, if not the sole cause of the discharge. This occasionally meant that an individual might have been administratively discharged for unfitness for a very short AWOL, plus numerous other minor infractions. It was impossible to devise any objective method to separate the reasons for the discharge. The military services leave administrative discharges for unfitness to the discretion of commanders. They do not have binding rules on the character of misconduct necessary to warrant an Undesirable Discharge.

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We recognized the dual need to have clear and objective jurisdictional rules, while at the same time retaining flexibility to make appropriate dispositions in cases in

which a short AWOL was an insignificant factor in the discharge. We decided to accept these marginal cases, since the right to have one's case heard should be broadly granted. However, the fact that an applicant had committed military offenses in addition to a very brief AWOL sometimes resulted in a denial of clemency, a consequence perhaps more detrimental than a denial of jurisdiction.

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

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

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

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

The exclusion from the program of persons who were precluded by law from re-entering the United States also posed difficult problems. If an order of a court or the Immigration and Naturalization Service had already decided the question, we were bound by that determination. But we considered it not within our province to decide complex questions of immigration and citizenship law. For that reason, we provisionally accepted the cases of persons for whom no such determination had yet been made. We took tentative action on these cases, forwarding them to the President with the recommendation that he not act until proper judicial or administrative determinations had been made by the Justice Department.

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

by letter of other legal and administrative remedies available to them.

C. Clemency, Not Amnesty

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

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

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

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

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

To those who were still serving prison terms for draft or military absence offenses, the President directed immediate furloughs upon application for clemency. Except for one person who chose not to participate, each of the roughly 100 incarcerated civilians and 170 incarcerated servicemen who applied to the Presidential Clemency Board were released. Under the President's direction, the Presidential Clemency Board gave priority to those cases, and all had their sentences permanently commuted.

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"Clemency"

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

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

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

The Presidential pardon is the supreme constitutional act of forgiveness or mercy. It is an expression of society, through the Chief Executive, signifying that it will disregard the offense for which an individual was originally prosecuted. It thus removes the social blot of a criminal conviction and relieves any continuing impairment of Federal civil rights, such as the right to hold Federal office or to sit on a Federal jury. Also, most states recognize a Presidential pardon as a matter of comity, restoring the right to vote, to hold office, and to obtain licenses for trades and professions from which convicted felons are often barred. A pardon does not change history, and it does not compensate for any rights or benefits, legal or economic, that the individual had already lost. It operates prospectively only. A pardon is a Presidential expression that the stigma of conviction has been removed, and that its recipient should no longer be discriminated against when seeking jobs, credit, housing, or any other opportunities. However, a pardoned offender is not considered as though he never committed the offense.[21] A pardon removes most of the legal disabilities of the offense, but it does not bring its recipient treatment equal

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to that accorded a person who has never committed an offense.[22]

Although the Executive Order did not state explicitly that a Presidential pardon was to be the form of clemency offered to applicants to the Clemency Board, the Board interpreted this as the President's intent. By approving the Board's clemency recommendations, the President confirmed our understanding that he wished a pardon to be the form of clemency offered to convicted evaders and to military absentees, whether they had been discharged by court-martial or by administrative action. The grant of a pardon to a person who had been discharged without a court-martial conviction was a generous gesture, but not a break from precedent. A President pardons the act, not merely the judicial consequences that may have flowed from it. Previous Presidents granted pardons to persons who had suffered administrative penalties for a wrongful act, even though they had never been convicted of a crime. Pursuant to our recommendation, President Ford offered pardons to the persons who had been given Undesirable Discharges for AWOL offenses but who had not been convicted in a military court. This group comprised 60% of the military applicants to the Presidential Clemency Board.

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

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

The President's program was a unique and supplemental form of relief to certain classes of former servicemen. It did not deny pre-existing statutory or administratively granted avenues of relief available to individuals regardless of their eligibility for clemency. While perhaps the relinquishment of those rights could have been made a condition of the President's program, no such condition was

expressed in his Proclamation. For that reason, all military applicants who receive a Clemency Discharge can still apply for a further upgrade through the appropriate military review boards. Likewise, they can still appeal for benefits to the Veterans' Administration.[24] Their chances for success should be much better with a pardon and Clemency Discharge than with their original discharge and record of unpardoned offenses.

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

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

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

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By participating in the Defense program, fugitive AWOL offenders automatically ended their fugitive status and were relieved of the prospect of up to five years imprisonment

and a Dishonorable or Bad Conduct Discharge. They spent one to three days at Fort Benjamin Harrison and received an Undesirable Discharge. They could then perform alternative service in order to earn a Clemency Discharge. Even if they subsequently fail to complete alternative service, no changes can be brought against them unless it can be shown that they did not intend to perform alternative service when they received their Undesirable Discharge. At a minimum, they re-enter society in vastly improved circumstances.

The Defense program provided a special form of clemency to forty-eight applicants. Most of these individuals had served meritoriously in Vietnam or had been the victims of serious administrative errors which led to their offenses. Forty-six received immediate discharges under honorable conditions, thereby qualifying for full veterans' benefits. Two were allowed to return to military service with no penalty. They were much like the approximately 80 individuals for whom the Clemency Board recommended that discharges be upgraded to honorable conditions.

Not "Amnesty"

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

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

The difference between amnesty and clemency is largely a matter of semantics. The terms amnesty and clemency have been used interchangeably in American history. Indeed, there is no significant legal difference between a pardon and an amnesty.

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

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

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

D. Conditional, Not Unconditional, Clemency

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

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

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

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Condition of Application

The President could have directed the Clemency Board to review the cases of all those eligible without the requirement of an application. The condition of application required that individuals had to take some initiative to

show their interest in reconciliation. Further, the grant of a pardon must be accepted by the recipient to be effective. It would have been a useless gesture to review the cases of persons who would have later declined the President's offer.

The Executive Order gave the Board discretion to determine acceptable applications, and we decided to make the process as easy as possible. To make a timely initial filing, the applicant or a person acting in his behalf had to contact any agency of the Federal government not later than the application deadline of March 31, 1975, and express an interest in participating. Written inquiries were acceptable if mailed not later than March 31. We accepted no applications submitted after the President's deadline. We strictly adhered to this rule, rejecting approximately 500 late applications.

Applications misdirected to consulates, probation offices, and Congress were all considered acceptable, because many applicants were confused about the division of responsibility among the four agencies implementing the program. If this contact was in writing by the applicant himself or his attorney, it was a valid application. If the initial filing was made over the telephone or by someone other than his attorney, the applicant was given until May 31, 1975, to confirm the contact in writing.[30] Individual cases sometimes presented difficult questions of proof, especially when persons made oral applications to other Federal officials.

(Case 2-1) Living in Canada at the time, applicant alleged that he telephoned a U.S. Consulate prior to March 31 and had been told that the deadline did not apply to his case. Unfortunately, the Consulate kept no records of inquiries about the clemency program. Applicant re-entered the United States in early April after completing his Canadian employment obligations. He immediately appeared at a United States Attorney's office.

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

Where the application contained insufficient information for us to obtain the facts necessary for our case-by-case determination, we tried to contact the applicant and obtain these facts. We made repeated phone calls and mailings to thousands of applicants who had submitted timely but incomplete applications. Despite repeated efforts to obtain more information, we ended our work on September 15, 1975, with about 1,000 applications for which we were unable to obtain the facts necessary to make case recommendations. These cases were returned to the Pardon Attorney for further investigation and processing in accord with Clemency Board standards and precedents.

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

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

Condition of Alternative Service

Those assigned to alternative service under any part of the President's program come under the jurisdiction of the Selective Service System. Clemency Board applicants have thirty days from the date that they learn of the President's clemency offer in which to enroll with Selective Service. Department of Justice and Department of Defense applicants had fifteen days in which to enroll.

All individuals assigned to alternative service are informed that under Selective Service rules they may work anywhere in the United States. To enroll, they have to travel to their desired area of residence and contact the nearest office of Selective Service. There are now about 650 such offices throughout the United States. Initially, applicants have the opportunity of finding jobs of their own choosing. They are encouraged by Selective Service to find work which utilize their special talents. If they find suitable jobs themselves, state Selective Service Directors have to determine if the jobs meet the following criteria:

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

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

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

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d. Unless he obtains a waiver from his State Selective Service Director, his pay must provide him with a standard of living that was at least equivalent to that which he would have enjoyed had he gone into or stayed in the military.[32]

If enrollees cannot find suitable jobs by the end of the twenty day period, state Selective Service Directors help them look for jobs.

Because of local economic situations, it has often been difficult for enrollees to find their own jobs, and it has not always been possible for Selective Service to place every enrollee in suitable positions. Selective Service rules specify that if through no fault of his own the enrollee has not been placed in a job within the thirty day period, time begins to be credited to his alternative service commitment on the thirty-first day following his enrollment. While this provision permits some individuals to earn clemency without having jobs, it avoids penalizing those willing to serve but for whom no jobs are available.

To avoid this problem, the Clemency Board has recommended to Selective Service that individuals in the Clemency Board program be able to fulfill their alternative service by performing unpaid work in the national interest for 16 hours per week for the designated period--three or six months in most cases. Selective Service has implemented part of this recommendation, allowing alternative service to be completed through 20 hours per week of unpaid work. This part-time work must be stretched out for longer than the designated three or six month period.

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

A former Marine's alternative service consisted of assisting a jailer. He adapted well to his job, attended school on his own time, and is now a deputy sheriff.

An Army veteran was assigned as a rodent and insect control inspector for the city's health department. His supervisor is so pleased with his work that he hopes to retain him after his alternative service is over.

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

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TABLE 4: INFORMATION ON ALTERNATIVE SERVICE PERFORMANCE
(as of October 1, 1975)

Status*	DoD	DoJ	PCB	Total
New Enrollees	66	46	212	324
Referred to Jobs	342	71	87	500
At Work	1269	480	102	1851
Job Interruption	135	30	4	169
Referred to Second Job	56	21	1	78
Postponed	60	17	7	84
Completed	100	21	7	128
Terminated	2479	41	10	2530
Total*	4507	727	430	5664

*Some applicants are classified in more than one category.

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

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

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The Selective Service System is confident that these difficulties can be overcome. This is important, because we believe that the true measure of our work lies not in the number offered clemency, but rather in the number who successfully complete alternative service and actually earn their pardons.

E. A Program of Definite, not Indefinite, Length

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

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

We soon learned, however, that our assumptions were incorrect. After reviewing the first several hundred cases, we discovered that most applicants were not well-educated, articulate persons, but rather were poorly-educated, disadvantaged individuals who were not likely to be informed about the President's program. Military applicants, in particular, did not fit the stereotype of the knowledgeable, educated war resister. In the middle of December, when only about 800 people had applied to the Clemency Board, a limited survey of potential military applicants took place in Seattle, Washington. A veterans' counseling organization located twelve former servicemen eligible for our segment of the program. All twelve knew about the President's offer, but none of them knew that it applied to former servicemen.

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

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Once we realized that many of those eligible to apply to the Clemency Board knew nothing about their eligibility, we began an extensive public information program. On January 7, 1975, through the cooperation of the Administrative Office of the U.S. Courts and U.S. Probation and Parole Offices throughout the country, 7,000 information kits were mailed to convicted draft evaders. Throughout the month of

January, similar kits were mailed to government agencies that had some contact with eligible persons, such as the Veteran's Administration, employment offices, welfare offices, penal institutions, and post offices. Clemency Board members Hesburgh and Walt taped public service radio and television announcements explaining how one could apply. On January 14, 1975, these announcements were mailed to 2,500 radio and television stations across the United States. During January, seven members of the Board participated in one-day "blitzes" in sixteen of the major cities across the country. These visits consisted of a Board member going to a city for one day, holding press conferences, participating in various radio and television talk shows, and giving interviews to reporters from the city's major newspapers. To keep national media focused on the program, Chairman Goodell held numerous press conferences during January.

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

The public information campaign was continued in earnest. On February 17, 1975, at our request, the Department of Defense mailed 21,000 information kits to discharged military personnel with punitive discharges who appeared eligible for the program. The Department was unable to send kits to the 75,000 eligible persons with administrative discharges because of the excessive costs of obtaining their addresses and the difficulty of identifying which among hundreds of thousands of administrative discharges during the Vietnam era had resulted from AWOL-related offenses.

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

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

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We received over 10,000 applications during March, making a total of 21,500 by the time we finished counting. We had ten or twenty times what we once thought possible.

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

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

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

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

> ...in prescribing the length of alternative service in individual cases, the Attorney General, the Secretary of the appropriate Department, and the Clemency Board shall take into account such honorable service as an invidual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among those who participate in this program.[35]

The very essence of the pardoning power is to treat each case individually. The Supreme Court of the United States has consistently read the Constitution to authorize the President to exercise his pardon power on a case-by-case basis.[36]

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

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their offenses primarily because of opposition to war. (See Chapter 3.)

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

Clemency Board Procedures

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

In brief, our process began with a telephone call or letter from an individual inquiring about clemency. We accepted any affirmative expression of interest, whether oral or written, as a provisional application, and we accepted applications made on an individual's behalf by third parties. While these were sufficient to satisfy the application deadline, we required a perfected application before we would complete action on a case.[37] Any application could be withdrawn at any time, without penalty.

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

We then began his case file and give him a case number. Preliminary questions of jurisdiction were resolved by the staff under Board guidance. The information-gathering process then began. First, the staff ordered official records and files. After they had been received, a case attorney was assigned to prepare a case summary, which would later be used as the basis of our case disposition. This case summary was the key element of the entire case-by-case approach. When the case summary had been prepared, the

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quality control staff reviewed it carefully for fairness and accuracy. The case was then ready for presentation to the Board, and the summary was mailed to the applicant for his comment. Because of this reliance on government files, we gave the applicant an opportunity to review his case summary and make suggestions for corrections and additions. We also wanted the individual to know the exact materials the Board would consider in reviewing his case. Finally, we used the mailing of the summary as another opportunity to encourage the applicant to send further information to us on his own behalf.

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

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

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

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

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Department of Justice Procedures

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

> In the determination by the United States Attorney of the length of service..., an applicant shall be permitted to: (1) have counsel present; (2) present written information on his behalf; (3) make an oral presentation; and (4) have counsel....
>
> An applicant shall not have access to investigatory records in the possession of the United States Attorney except as provided by 32 C.F.R. 160.32. The United States Attorney shall make his decision on the basis of all relevant information. No verbatim record of the proceeding shall be required.[39]

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

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

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

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performance of work would be delayed, pending the completion of their studies.[40]

Following these procedures, U.S. Attorneys dropped prosecutions or discontinued investigations of draft offenders in return for the satisfactory completion of assigned of alternative service. In those instances where the individual was without financial resources, the United States Attorney assisted in making arrangements for legal representation.

Department of Defense Procedures

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

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

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

> a. To comply with the above directives, each individual participating in the President's program is offered the opportunity during his processing to submit to the Board additional documentation that he desires the Board to consider on his behalf. Conversely, he must so indicate that he does not desire to make a statement if that is his decision. This provides the individual an opportunity to state his reasons for unauthorized absence, to indicate the nature of his employment or service while absent, and to provide any other statements or matters he wishes considered by the Board.
>
> b. The military services are required to provide a summary of each individual's record to highlight service-related factors to be considered....
>
> c. The total available service record, statements submitted by the individual, and the service provided summary sheet are reviewed and evaluated independently by each member of the

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Board. Records which contain conflicting or questionable data are returned to the service for verification of the information. Each Board member considers all available information and makes an independent judgment to determine if there is appropriate justification for reducing required alternate service below 24 months. He then records the number of months which he considers appropriate for the individual to serve. When all Board members have reviewed a case and made an independent determination of alternate service time, Board member votes are compared. In the event of a tie or split vote, the case is openly discussed by the Board members to resolve differences. In the event of a tie vote during arbitration, the President of the Board votes to break the tie. This decision on the number of months of alternate service is considered the final decision of the full Board.

d. The decision is annotated on the summary sheet, signed by a Board member and returned to the applicable service for separation processing.[42]

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

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

Personal appearances were allowed only in exceptional circumstances. The Board felt that the availability of applicants' military records and the applicants' right to supplement their records with further information made appearances unnecessary. No opportunities for appeal were provided. Altogether, most applicants spent no more than three days at the Joint Clemency Processing Center.[43]

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A. Introduction

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Conscription is, by nature, selective. In a sense, Clemency Board applicants were victims of misfortune as much as they were guilty of willful offenses. Most other young Americans did not have to face the same choices. Only nine percent of all draft-age men served in Vietnam. Less than two percent ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred--were convicted or still remain charged with these offenses. By contrast, 60% of all draft-age men were never called upon to serve their country.[1] For this reason alone, applicants to the President's clemency program deserve the compassion of their countrymen.

As we decided cases, we came to understand better the kinds of people who had applied for clemency. By the time we had reviewed all cases, each of us had read approximately 3,000 case summaries for our respective Board panels. From these case summaries, we learned what applicants' family backgrounds were like, what experiences they had with the draft and the military, why they committed their offenses, and what punishments they endured.

Many applicants fell into common categories--the sincere Vietnam war resister who was denied his application for conscientious objector (CO) status and faced trial and punishment as a matter of principle; the Jehovah's Witness who, although granted a CO exemption, went to jail because his religious convictions prohibited him from accepting an alternative service assignment from Selective Service; the Vietnam veteran who went AWOL because of his difficulties in adjusting to post-combat garrison duty; the young serviceman, away from home for the first time, who could not adjust to military life; the serviceman with his family on welfare who went AWOL to find a better-paying job.

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We also had a few less sympathetic cases: the civilian who dodged and manipulated the system not for conscientious reasons, but simply to avoid fulfillment of any kind of obligation of national service--or the soldier who deserted his post under fire.

In this chapter, we describe civilian and military applicants to the Clemency Board. Who were they? What did they do? Why did they do it? Excerpts from actual cases tell much of the story, supplemented by the results of a comprehensive survey we conducted from the case summaries of 472 civilian applicants and 1,009 military applicants -- roughly 25% and 7% of the total number of our eligible civilian and military applicants, respectively. (See Appendix C.) At the chapter's end, we try to identify those who did not apply, why they did not, and what happens to them next.

The excerpts from our case summaries illustrate a broad range of fact situations. Many of the applicants were recommended for outright pardons, others for conditional clemency with alternative service, and a few were denied clemency. (See Chapter 5.) Information in these excerpts is based upon the applicants' own allegations, sometimes without corroboration.

As we describe the circumstances and experiences of the applicants, we are doing so only from the perspective of the 14,500 cases we decided. These were individuals whom the military, the draft system, and the judiciary had to judge on the basis of more information and different standards than we did. Our mission was clemency; theirs was the enforcement of Federal law and military discipline.

The Board's recommendations for clemency should not be used to infer any improper actions on the part of draft boards, courts, or the military. These agencies did their duty during the Vietnam era, as set forth by the President, the Congress, and the Supreme Court. It was not the intent of this program to undermine the effectiveness of those institutions in carrying out their legitimate functions in peace and war.

B. Civilian Applicants

In many ways, the civilian applicants were not unlike most young men of their age throughout the United States. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. Most grew up in cities (59%) and suburbs (19%), with disproportionately many in the West and few in the South.

They were predominantly white (87%) and came from average American families. Twenty-nine percent came from economically disadvantaged backgrounds. Over two-thirds (69%) were raised by both natural parents, and evidence of severe family instability was rare. The proportion of blacks (11%) and Spanish-speaking persons (1.3%) was about the same as found in the general population. Over three-quarters (79%) had high school diplomas, and 18% had finished college. A very small percentage (4%) had felony convictions other than for draft offenses.

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Two things set the civilian applicants apart. First, 75% opposed the war in Vietnam strongly enough to face punishment rather than be inducted. Many were Jehovah's Witnesses (21%) or members of other religious sects opposed to war (6%). Second, they -- unlike many of their friends and classmates -- were unable or unwilling to evade the draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They stayed within the system and paid a penalty for their refusal to enter the military.

In the discussion which follows, we trace the general experiences of civilian applicants to the Clemency Board. We look first at their experiences with the draft system. After examining the circumstances of their draft offenses, we focus on their experiences in the courts and prisons. Finally, we describe the impact of their felony convictions.

With few exceptions, the statistics are based upon a sample of 472 civilian applicants - roughly one-fourth of our total number of civilian applications. (See Appendix C.)

Selective Service Registration

Civilian applicants, like millions of other Americans, came into contact with the Selective Service System when they reached the age of eighteen -- usually between 1966 and 1968. They then were required by law to register for the draft. Often, it was their first direct contact with a government agency. A few (3%) of the applicants committed draft offenses by failing to register with the draft -- or failing to register on time. Ignorance or forgetfulness was no defense, but draft boards rarely issued complaints for failure to register unless an individual established a pattern of evasion.

(Case 3-1) Applicant was convicted for failing to register for the draft. As a defense, he stated that he was an Italian immigrant who did not understand the English language. However, there were numerous false statements on his naturalization papers, and he was able to comply with state licensing laws as he developed several business enterprises in this country.

After registration, civilian applicants were required to keep their local board informed of their current address. Failure to do so was a draft offense, for which ten percent of them were convicted. These tended to be itinerant individuals with little education, who by background were unlikely to understand or pay due respect to their Selective Service responsibilities.

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(Case 3-2) Applicant's father, a chronic alcoholic, abused applicant and his mother when intoxicated. Applicant left his home to

seek work, without success. Because of his unsteady employment, he was compelled to live with friends and was constantly changing his address. His parents were unable to contact him regarding pertinent Selective Service materials. After his conviction for failing to keep his draft board informed of his address, applicant apologized for his "mental and emotional confusion," acknowledging that his failure to communicate with the local board was an "error of judgment on my part."

The local board was under no obligation to find an individual's current address, and it was his responsibility to make certain that Selective Service mail reached him.

(Case 3-3) Applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office, but he did not notify his local board. He mistakenly thought this action fulfilled his obligation to keep his local board informed of his current address.

(Case 3-4) Applicant's mother telephoned his new address to the local board. Selective Service mail still failed to reach him, and he was convicted for failure to keep his board informed of his whereabouts. The last address his mother had given was correct, but the court did not accept his defense that mail did not reach him because his name was not on the mailbox.

Selective Service Classification

Immediately after civilian applicants registered with local boards, they were given Selective Service classifications. There were a number of different kinds of deferments and exemptions. Many of the forty-four percent who attended college received student deferments. Some applied for hardship deferments, occupational deferments, physical or mental exemptions, or ministerial exemptions, particularly the twenty-one percent who were Jehovah's Witnesses. The greatest number applied for conscientious objector exemptions. Some applied for numerous deferments and exemptions, with draft boards offering procedural rights even for claims that were obviously dilatory.

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(Case 3-5) Applicant had a student deferment from 1965 to 1969. He lost his deferment in 1969, apparently because of his slow progress in school (he did not graduate until 1973). His two appeals to keep his student deferment were denied. After passing his draft physical and having a third appeal denied, he applied for a

conscientious objector exemption. This was denied, and his appeal was denied after a personal appearance before his state's Selective Service Director. After losing another appeal to his local board, he was ordered to report for induction. One day after his reporting date, he applied for a hardship postponement because of his wife's pregnancy. He was granted a nine-month postponement. He then requested to perform civilian work in lieu of military service, but to no avail. After his wife gave birth, he fled to Canada with her and the child. He returned to the United States a year later, and was arrested.

Very few civilian applicants hired attorneys to help them submit classification requests and appeals. Others relied on the advice of local draft clerks. Others turned to friends, family, and draft-counseling organizations. However, it was their responsibility to make themselves aware of the legal rights available to them.

(Case 3-6) Applicant made no attempt to seek a personal appearance before the local board or appeal its decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

Some tried to interpret Selective Service forms without help from either legal counsel or draft board clerks. At times, this prevented them from filing legitimate claims.

(Case 3-7) Applicant initially failed to fill out a form to request conscientious objector status because the religious orientation of the form led him to believe he would not qualify. After Welsh,[2] he believed he might qualify under the expanded "moral and ethical" criteria, so he requested another form. When his local board sent him a form identical to the first one, he again failed to complete it, believing that he could not adequately express his beliefs on a form designed for members of organized religions.

Others relied only on their personal knowledge of Selective Service rules, without making inquiry.

(Case 3-8) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification was an orthodox religious belief in a supreme being.

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Some civilian applicants' requests for deferments or exemptions were granted; others were denied. In case of

denial, an individual could appeal his local board's decision to the state appeals board. A few civilian applicants claimed that local board procedures made appeals difficult, but it was their own responsibility to learn about their opportunities for appeal.

(Case 3-9) Applicant claimed that he was given no reasons for the denial of his claim for conscientious objector status. As a result, he said that he was unaware of how or where to appeal his case to a higher level.

Others lost their rights because of their failure to file appeal papers within the time limits established by law.

(Case 3-10) Applicant, a Jehovah's Witness, was unaware of the time limitations on filing notices of appeal. He continued to gather evidence for his appeal, but it was ultimately denied on the procedural grounds of his failure to make timely application for appeal.

If a civilian applicant failed to appeal his local board's denial of request for reclassification, he might have been unable to raise a successful defense at trial.

(Case 3-11) Applicant failed to appeal his local board's denial of his conscientious objector claim, which he claimed was done without giving any reasons for the denial. Although his trial judge indicated that the local board's action was improper, he nevertheless approved a conviction because applicant had failed to exhaust his administrative remedies by appealing his local board's decision.

Even if an applicant had been unsuccessful in his initial request for reclassification -- whether or not he appealed his local board's decision -- he could request a rehearing at any time prior to receiving his induction notice. If a registrant could submit a prima facie case for reclassification, his local board had to reopen his case. When this happened, he regained his full appeal rights.

(Case 3-12) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim for reclassification. Despite this rehearing, his local board found the evidence insufficient to merit a reopening of his case. Without a formal reopening, applicant could not appeal his board's findings upon rehearing.

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Many applicants exercised a variety of procedural rights in their requests for all types of deferments and

exemptions. Some of their claims appeared to be contorted efforts to avoid induction.

(Case 3-13) Applicant claimed that his wife, who had been under psychiatric care, began to suffer hallucinations when he received his induction notice. He requested a hardship deferment, with two psychiatrists claiming that he should not be separated from his "borderline psychotic" wife. This request was denied. Applicant later tried to get a physical exemption by having braces fitted on his teeth. However, he instead was convicted of conspiring to avoid induction. (His dentist also faced charges, but fled to Mexico to escape trial. The dentist applied to the Clemency Board for clemency, but we did not have jurisdiction over his case.)

(Case 3-14) Applicant informed his draft board that he had a weak back and weak knees. The physician who examined his refused to verify this. Applicant then forged the physician's name and returned the document to his draft board.

Other claims appeared to have more merit, but were nonetheless denied by local boards. The local boards had the benefit of the full record in these cases, and had to weigh them against claims made by other registrants.

(Case 3-15) Applicant's father was deceased, and his mother was disabled and suffered from sickle cell anemia. His request for a hardship deferment was denied. Also, applicant claimed that he suffered from a back injury. This allegation was supported by civilian doctors, but denied by military doctors.

(Case 3-16) Applicant's parents were divorced when he was 16, with his father committed to a mental institution. Applicant dropped out of school to support his mother. A psychiatrist found applicant to suffer from claustrophobia, which would lead to severe depression or paranoid psychosis if he entered the military. However, he did not receive a psychiatric exemption.

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The classification of greatest concern to most civilian applicants was the conscientious objector exemption. Almost half (44%) took some initiative to obtain a "CO" exemption. Twelve percent were granted CO status, 17% applied but were denied, and the remaining 15% never actually completed a CO application.

Of the 56% of the civilian applicants who took no initiative to obtain CO status, roughly half (25%) committed their draft offenses for reasons unrelated to their

opposition to war. Others may not have filed for a CO exemption because they were unaware of the availability of the exemption, knew that existing (pre-Welsh) CO criteria excluded them, or simply refused to cooperate with the draft system.

(Case 3-17) Applicant, a Jehovah's Witness, had his claim for a ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and ordered to report for induction. (He complied with his draft order, but he later went AWOL and received an Undesirable Discharge.)

(Case 3-18) Applicant did not submit a CO application because it was his understanding that current (pre-Welsh) CO rules required that he be associated with a widely recognized pacifist religion. His refusal to participate in war stemmed from his personal beliefs and general religious feelings.

(Case 3-19) Applicant, a Jehovah's Witness, refused to file for CO status because he felt that by so doing he would be compromising his religious principles, since he would be required by his draft board to perform alternative service work.

Usually, those who took some initiative but failed to follow through with their CO application were pessimistic about their chances for success.

(Case 3-20) Applicant filed a CO claim in 1969, after he received his order to report for induction. His draft board postponed his induction date and offered him a hearing. However, applicant did not come to his hearing and advised his draft board that he no longer desired CO status. He stated at trial that he decided not to apply for a CO exemption because the law excluded political, sociological, or philosophical views from the religious training and beliefs necessary for CO status at the time.

Some did not pursue a CO exemption because of their inability to qualify under pre-Welsh rules. Occasionally, applicants claimed that they had been discouraged from applying.

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(Case 3-21) In reply to applicant's request for a CO application form, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, he did not bother to return the form.

Some applicants failed to submit their CO applications on time, because of inadvertence or lack of knowledge about filing requirements.

(Case 3-22) Applicant wished to apply for CO status, but his form was submitted late and was not accepted by his local board. His lawyer had lost his application form in the process of redecorating an office.

(Case 3-23) Applicant applied for CO status after his student deferment had expired. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Consequently, his local board refused to consider his CO application.

In the midst of the Vietnam War, the substantive law regarding conscientious objectors changed dramatically, profoundly affecting the ability of many applicants to submit CO claims with any reasonable chance of success. In June 1970, the Supreme Court clarified conscientious objection in Welsh v. United States, stating that this exemption should be extended to those whose conscientious objection stemmed from a secular belief--whose consciences, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war.[3] In the later case of Clay v. United States, the court stated the three requirements for CO classification as: (1) there must be opposition to war in any form; (2) the basis of opposition to war must be moral, ethical, or religious; and (3) the beliefs must be sincere.[4]

Twenty-three percent of the civilian appliants claimed that they committed their offense primarily because of ethical or moral opposition to all war -- and thirty-three percent said they committed their offense at least partly because of such ethical or moral feelings. Of these ethical or moral objectors, only eleven percent took any initiative to obtain a CO exemption, eight percent filing for CO status. Only 0.2% were successful. Why did so few seek CO status?

Ninety percent registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and thirty-five percent committed their draft offense before the decision. However, only thirteen percent were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but most (74%) pled guilty to their charges.

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There are three persuasive reasons why more civilian applicants did not apply for or, qualify for a CO exemption.

First, a great many apparently did not understand what Selective Service rules were or what defenses could be raised at trial.

(Case 3-24) Applicant failed to submit a CO application after allegedly being told by his local board that only members of certain religious sects were eligible. This occurred after the Welsh decision.

Second, many others objected not to war in general, but to the Vietnam War alone. These "specific war" objectors could not qualify for CO exemptions even under the post-Welsh guidelines.

(Case 3-25) Applicant's claim for conscientious objector status was denied by his local board because he objected only to the Vietnam War, rather than all wars.

Third, some applicants claimed that they were denied CO status because their local boards applied pre-Welsh rules to their post-Welsh CO claims. Of the civilian applicants who raised post-Welsh "moral and ethical" CO claims, only ten percent were successful. By contrast, CO applicants who claimed to be members of pacifist religions enjoyed a 56% success rate before and after Welsh. Of course, many of the moral and ethnical objectors may have failed to meet the post-Welsh requirement of sincere beliefs when they applied to their local boards.

(Case 3-26) Applicant's request for conscientious objector status was denied, partially on the basis that he had no particular religious training or experience to establish opposition to war. This determination was made after Welsh ruled that such formal religious training was not a prerequisite to conscientious objector status.

It did not appear that the CO application form significantly discouraged CO applications; twenty-eight percent of those with college degrees applied for CO status, versus 19% of these with less education. The less-educated applicants were successful in 53% of their CO claims, while those with college degrees were successful in only 14% of their CO claims. This may be attributable to the fact that those with less education more often based their claims on religious grounds.

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Alternative Service for Conscientious Objectors

Approximately one-eighth of our civilian applicants did receive CO exemptions. In lieu of induction into the military, they were assigned to twenty-four months of alternative service in the national interest. However, they

refused to perform alternative service as required by law and were subsequently convicted of that offense.

Some individuals had difficulty in performing alternative service jobs because of the economic hardships they imposed.

(Case 3-27) Applicant was ordered to perform alternative service work at a soldier's home for less than the minimum wage. The soldier's home was fifty miles away from his residence, and he had no car. Applicant claimed that it was impossible to commute there without a car, and that even if he could, he would be unable to support his wife and child on that salary. Not knowing what legal recourses were available to him, he simply did not do the work, although he was willing to perform some other form of alternative service.

Others decided that they could not continue to cooperate with the draft system because of their opposition to the war.

(Case 3-28) Applicant refused to perform alternative service as a protest against the war in Vietnam.

However, most civilian applicants assigned to alternative service who refused to perform such work were Jehovah's Witnesses or members of other pacifist religions. Their religious beliefs forbade them from cooperating with the orders of an institution like Selective Service which they considered to be part of the war effort. They were prepared to accept an alternative service assignment ordered by a judge upon conviction for refusing to perform alternative service. Many judges sent them to jail instead.

(Case 3-29) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System on the grounds that even this attenuated participation in the war effort would violate his religious beliefs. He did indicate that he would be willing to perform similar services under a court order of probation. Rather than comply with his request, the judge sentenced the applicant to prison for failure to perform alternative service.

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Induction Orders

Those who were not granted CO exemptions were reclassified I-A after their other deferments had expired. Their induction orders may have been postponed by appeals or short-term hardships, but eventually they -- like almost two million other young men during the Vietnam War -- were ordered to report for induction. Only four percent of our

applicants failed to report for their pre-induction physical examination. It was not until the date of induction that 70% violated the Selective Service laws. In fact, of those applicants who received orders to report for induction, nearly one-third (32% of all civilian applicants) actually appeared at the induction center. When the time came to take the symbolic step forward, these applicants refused to participate further in the induction process.

Once induction orders had been issued and all postponements had been exhausted, applicants had a continuing duty to report for induction. It was sometimes the practice of local boards to give individuals several opportunities to comply by issuing more than one induction orders before filing a complaint with the United States Attorney.

(Case 3-30) Applicant was ordered to report for induction, but he instead applied for CO status. His local board refused to reopen his classification, and he was again ordered to report for induction. He again failed to report, advising his draft board after-the-fact that he had been ill. He received a third order to report, but again did not appear. Thereafter, he was convicted.

On occasion, applicants claimed that they never received induction orders until after Selective Service had issued complaints. However, applicants were legally responsible to make sure that mail from their draft boards reached them.

(Case 3-31) While applicant was attending an out-of-state university, his mother received some letters from his draft board. Rather than forward them, she returned them to the board. Her husband had recently died, and she feared losing her son to the service. Subsequently, applicant was charged with a draft offense.

(Case 3-32) Having been classified 1-A, applicant informed his draft board that he was moving out of town to hold a job, giving the Board his new address. He soon found that his job was not to his liking. He then returned home, and not long thereafter he told his draft board that he was back. However, in the interim an induction order had been sent to his new address, he had not appeared on his induction date, and a complaint had been issued.

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Sometimes, personal problems hindered applicants from appearing as ordered at induction centers.

(Case 3-33) Applicant failed to report to his pre-induction physical because he was hospitalized as a result of stab wounds.

He was again ordered to report, but he did not appear because he was in jail. He was ordered to report for a third time, but applicant claimed he failed to report because of his heroin addiction. Therefore, he was convicted for his draft offense.

Many applicants claimed that the realization that they were conscientiously opposed to war came only after they received induction notices. The notices may have acted as catalysts which led to the late crystallization of their beliefs.

(Case 3-34) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

However, a registrant could not request a change in status because of "late crystallization" after his induction notice was mailed, unless he experienced a change in circumstances beyond his control. In 1971, the Supreme Court held in Ehlert v. United States that a post-induction-notice claim for conscientious objector status did not constitute a change in circumstances beyond the applicant's control.[5]

Reasons for Draft Offenses

To be eligible for clemency, civilian applicants must have committed at least one of six offenses enumerated in the Executive Order. (See Chapter 2-B.) As described earlier, three percent failed to register, ten percent failed to keep their local boards informed of their address, 13% failed to perform alternative service as conscientious objectors, four percent failed to report for pre-induction physical exams, 38% failed to report for induction, and 32% failed to submit to induction. At the time of most applicants' draft violations, they were between the ages of 20 and 22, and the year was 1970 - 1972. For over 95% of these applicants, their failure to comply with the Selective Service law were their first criminal offenses.

Numerous reasons were given by civilian applicants for their offenses. The most frequent of their reasons was conscientious objection to war in either general or particular form. Fifty-seven percent expressed either religious, ethical or moral objection to all war, and an additional 14% expressed specific objection to the Vietnam War. When other related reasons were considered (such as denial of CO status), 75% of the civilian applicants claimed that they committed their offenses for reasons related to their opposition to war. Likewise, expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in 73% of our cases.

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(Case 3-35) Applicant had participated in anti-war demonstrations before refusing induction.

He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner."

(Case 3-36) Applicant applied for conscientious objector status on the ground that because he was black he could not serve in the Armed Forces of "a nation whose laws and customs did not afford (him) the same opportunities and protection afforded to white citizens." His application was denied, and he refused induction.

By contrast, less than one out of six of all our civilian applicants were found by the Board to have committed their offenses for selfish reasons.

Other major reasons for their offenses include medical problems (6%) and family or personal problems (10%).

(Case 3-37) When applicant was ordered to report for induction, his wife was undergoing numerous kidney operations, with a terminal medical prognosis. She was dependent upon him for support and care, so he failed to report for induction.

Experiences as Fugitives

At one time or another, all civilian applicants faced the difficult decision whether to submit to the legal process or become fugitives. Nearly two-thirds immediately surrendered themselves to the authorities. Of the remaining one-third who did not immediately surrender, 82% never left their hometowns. Of the 18% who did leave to evade the draft, slightly less than half (8%) ever left the United States. Most at-large civilian applicants remained fugitives for less than one year. Many reconsidered their initial decision to flee, and about one-third surrendered. Many of the rest were apprehended only because they lived openly at home and made no efforts to avoid arrest. Over two-thirds of our at-large applicants were employed full-time; most others were employed part-time, and only one out of ten was unemployed. Very few assumed false identities or took steps to hide from authorities.

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Most fugitive applicants who chose to go abroad went to Canada. Geographical proximity culture, history, and language were two reasons why they chose Canada. However, the major reason for the emigration of American draft resisters to Canada was the openness of their immigration laws.[6] Some civilian applicants were either denied

immigrant status or deported by Canadian officials. Otherwise, they might have remained there as fugitives.

(Case 3-38) After receiving his order to report for induction, applicant went to Canada. He was denied immigrant status, so he returned to the United States and applied for a hardship deferment. After a hearing, his deferment was denied. He was once again ordered to report for induction, but he instead fled to the British West Indies. He was apprehended after returning to Florida to make preparations to remain in the West Indies permanently.

Most applicants who went to Canada (6%) stayed there briefly, but some remained for years. A few severed all American ties, with the apparent intention of starting a new life there.

(Case 3-39) In response to Selective Service inquiries, applicant's parents notified the local board that their son was in Canada. However, they did not know his address. Applicant lived and worked in Canada for almost four years.

The only applicants to the Clemency Board who remained permanently in Canada were those who fled after their conviction to escape punishment.

(Case 3-40) Applicant was convicted for refusing induction, but remained free pending appeal. When his appeal failed, he fled to Canada. He remained in Canada until he applied for Clemency.

Pre-Trial Actions

Civilian applicants began to face court action when their local draft boards determined that sufficient evidence of Selective Service violations existed to warrant the forwarding of their files to United States Attorneys. After complaints were issued and indictments or information returned against them, the litigation fell within the jurisdiction of the Federal district courts.

The courts dismissed many draft cases. From 1968 through 1973, the number of cases and the dismissal rate continuously increased. Through 1968, only about 25% of all cases resulted in dismissal. From 1969 through 1972, about 55% were dismissed -- and in 1973, over two-thirds were dismissed.[6]

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One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or a tendency to dismiss draft cases. For example,

in the Northern District of California since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal.[7] At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern district. In 1970, its dismissal rate averaged 48.9 draft cases per 10,000 population, closely followed by the Central District of California with 43.1. The national average was 14.1. Some Clemency Board applicants apparently "forum shopped" in California and other Western states; five percent received their convictions in the Ninth Circuit even though their homes were elsewere.

Jurisdictional inequities in the dismissal rate for draft offenses within the same state were common during the war era. For example, in contrast to the dismissal rate in the Northern District of California (70%), the Eastern District of California dismissed only 40% of its draft cases. Similarly, in the Eastern District of Virginia 63% of the draft cases were dismissed, versus 35% in the Western District.[8]

Convictions and Acquittals

After civilian applicants were indicted and their motions for dismissal refused, 26% pled not guilty, and they next entered the trial stage. The rest pled either guilty (68%) or nolo contendere (6%). Many of those who pled quilty did so as part of a "plea bargain," whereby other charges against them were dismissed.

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted.[9] Assuming that all those acquitted pled not guilty, and assuming, by extrapolation, that 2,300 (26%) of convicted draft offenders pled not guilty, it appears that an individual stood an 85% chance of acquittal if he pled not guilty. Changing Supreme Court standards occurring after the offense but before trial may have led to acquittals. Of special importance was the 1970 Welsh case which broadened the conscientious objector exemption criteria to include ethical and moral objection to war.[10]

Of course, no Clemency Board applicants were among the 12,700 acquitted of draft charges. Typically, applicants were convicted around the age of 23, nearly two years after their initial offenses. Less than one out of ten appealed their convictions.

Some applicants may have been convicted because of the apparent poor quality of their legal counsel.

(Case 3-41) Applicant joined the National Guard and was released from active duty training eight months later. While in the National Guard reserves thereafter, he was referred to Selective Service for induction for failure to perform his reserve duties satisfactorily. He obeyed an order to

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report for induction, but claimed that he negotiated an agreement to settle his National Guard misunderstandings at the induction center. He pled not guilty of refusing to submit to induction, but he was convicted. Apparently, his trial attorney failed to call several important defense witnesses who had been present at the induction center. Applicant's present attorney believes that his trial attorney represented him inadequately. After conviction but before execution of his sentence, applicant completed his National Guard service and received a discharge under honorable conditions.

On occasion, applicants were given the opportunity to enlist or submit to induction up to the time of trial, as a means of escaping conviction. Some applicants later claimed that they were caught in "Catch-22" situations in which they could neither be inducted nor escape conviction for failing to be inducted.

(Case 3-42) Ordered to report for induction, applicant refused to appear at the induction center. While charges were pending against him, he was informed that he could seek an in-service CO classification after entering the military. With this knowledge, he agreed to submit to induction, and the court gave him a 30-day continuance. He did seek induction, but ironically, he could not be inducted because he failed to pass his physical due to a hernia condition. When his continuance expired, he was convicted of failure to report for induction.

However, others were convicted despite every possible attempt by authorities to deal fairly and leniently with them.

(Case 3-43) An order to report for induction was mailed to applicant's parents, but he failed to report. Over one year later, applicant's attorney contacted the United States Attorney and indicated that applicant had severe psychiatric and other medical problems which could make him fail his pre-induction physical. In response, the United States Attorney offered applicant an opportunity to apply for enlistment and be disqualified. However, applicant could not be found, and a grand jury subsequently issued an indictment.

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An analysis of conviction rates for draft offenses shows clear jurisdictional discrepancies. For instance, the Southern States had the highest propensity for conviction, with the eastern states and California having the lowest. In 1972, there were twenty-seven draft cases tried in

Connecticut, with only one resulting in conviction. In the Northern District of Alabama during the same period, sixteen draft cases resulted in twelve convictions.[11] These different conviction rates apparently occurred because of wide differences in attitude toward the draft violators. These differences in treatment may have encouraged forum-shopping by our applicants.[12]

The conviction rate itself varied considerably during the war era. In 1968, the conviction rate for violators of the Selective Service Act was 66%; by 1974, the conviction rate was cut in half to 33%. Apparently, as time went by, prosecutors, judges and juries had less inclination to convict draft-law violators.

Sentences

Only about one-third of the civilian applicants ever went to prison. The remainder were sentenced to probation and, usually, alternative service. A majority of applicants (56%) performed alternative service. Typically, they performed twenty-four or thirty-six months of alternative service, but a few served as many as five years. Some applicants performed their alternative service on a part-time basis. The jobs they performed were similar to those filled by conscientious objectors. However, they had to fulfill other conditions of probation.

(Case 3-44) As a condition of probation, applicant worked full-time for Goodwill Industries and a non-profit organization which provided jobs for disabled veterans. He received only a token salary.

(Case 3-45) Applicant worked for three years for a local emergency housing committee as a condition of probation. He worked full-time as a volunteer.

A few (6%) failed to comply with the terms of their probation, often by refusing to do alternative service work. Some then fled and remained fugitives until they applied for clemency.

(Case 3-46) Convicted for a draft offense, applicant was sentenced to three years probation, with the condition that he perform civilian work in the national interest. About one year later, his sentence was revoked for a parole violation (absconding from supervision). He was again sentenced to three years probation, doing alternative service work. He did not seek such work and left town. A bench warrant was issued for his arrest. Applicant, still a fugitive, now resides in Canada.

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Some were required, as a condition of probation, to enlist in military service. They suffered felony

convictions, served full enlistments in the military, and sometimes remained on probation after discharge. One percent of our civilian applicants became Vietnam veterans.

(Case 3-47) Applicant refused induction because of his moral beliefs. He was sentenced to three years imprisonment, suspended on the condition that he enlist in the military. Applicant did enlist, serving a full tour of duty. He served as a noncombatant in Vietnam, earning a Bronze Star. Awarded an Honorable Discharge, he still had one year of probation to complete before his sentence was served.

Of civilian applicants sentenced to imprisonment, most served less than one year. Only thirteen percent spent more than one year in prison, and less than one percent were incarcerated for more than two years. Approximately 100 civilian applicants were still serving their terms when the President's clemency program was announced, at which time they were released.

The sentencing provisions of the Military Selective Service Act of 1967 provided for jail terms of up to five years, giving judges sentencing discretion.[13] The sentencing dispositions of the courts were inconsistent and widely varying, dependent to a great extent upon year of conviction, geography, race, and religion. In 1968, 74% of all convicted draft offenders were sentenced to prison, their average sentence was 37 months, and 13% received the maximum five-year sentence. By 1974, only 22% were sentenced to prison, their average sentence was just fifteen months, and no one received the maximum. Geographic variations were almost as striking, In 1968, almost one-third of those convicted in the southern-states Fifth Circuit received the maximum five-year prison sentence, but only five percent received the maximum in the eastern-states Second Circuit. Of 33 convicted Selective Service violators in Oregon during that same year, 18 were put on probation, and only one was given a sentence over three years. In Southern Texas, of 16 violators, none were put on probation, 15 out of 16 received at least three years, and 14 received the maximum five-year sentence.[14]

Other sentencing variations occurred on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was thirty-four months, while for blacks and other minorities the average sentence was forty-five months. This disparity decreased to a difference of slightly more than two months in 1974.[15] While we did not perceive such a disparity as a general rule, some cases appeared to involve racial questions.

(Case 3-48) Applicant belongs to the Black Muslim faith, whose religion principles prohibited him from submitting to induction. He has been actively involved in civil rights and other social movements in his region of the country. He was convicted for his draft offense and

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sentenced to five years imprisonment. Applicant stated that his case was tried with extreme prejudice. He spent 25 months in prison before being paroled.

Some religious inequities may also have occurred. For the years 1966 through 1969, incarcerated Jehovah's Witness received sentences averaging about one month longer than the average Selective Service violators. During this same period, religious objectors other than Jehovah's Witnesses received average sentences about six months shorter than the average violator.[16]

Although a variety of sentencing procedures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving one-third of his term; or (2) an indeterminant sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before but not after one-third of the sentence had expired. Offenders sentenced under the Federal Youth Correction Act, could be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Additionally, because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervision might have lasted as long as six years.[17] Bureau of Prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation cases. When it was applied, the six year maximum period of supervision was imposed in almost all cases.[18]

Prison Experiences

One-third of the civilian applicants received prison sentences and served time in Federal prison. Most served their time without great difficulty.

(Case 3-49) Applicant served eighteen months in Federal prison. His prison report indicated that he did good work as a cook and had "a very good attitude." The report noted no adjustment difficulties, no health problems, and no complaints.

However, some experienced considerable difficulty in adapting to prison life.

(Case 3-50) Applicant, a member of Hare Krishna, was sentenced to a two-year prison term for a draft offense. Because of his religious convictions and dietary limitations, life in prison became intolerable for him. He escaped from Federal prison, surrendering three years later.

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Although very rare, instances of harsh treatment did occur.

(Case 3-51) Applicant was arrested in Arizona and extradited to the Canal Zone for trial (the location of his local board). Prior to trial, he was confined for four months in a four by six foot cell in a hot jungle. Some evidence exists that he was denied the full opportunity to post reasonable bail. At his trial, applicant was convicted and sentenced to an additional two months confinement. By the time of his release, his mental and physical health substantially deteriorated. He was then confined in a mental hospital for several months. His mental health is still a subject of concern.

Some could not escape the effects of their prison experience even after their relase.

(Case 3-52) Applicant became addicted to heroin while serving the prison sentence for his draft conviction. He turned to criminal activities to support his habit after he was released. He was later convicted of robbery and returned to prison.

Parole for Selective Service violators was determined primarily by the nature of the offense. It was the policy of many parole boards that draft violators serve a minimum of two years for parity with military duty, but most were released after the initial parole applications. Jehovah's Witnesses received first releases in nearly all instances. Most Selective Service violators were granted parole after serving approximately half their prison sentences, but many with prison sentences of less than one year served until their expiration dates. In each year from 1965 to 1974, Selective Service violators were granted parole more often than other Federal criminals.[19]

Consequences of Felony Convictions

Felony convictions had many grave ramifications for civilian applicants. The overwhelming majority of states construe a draft offense as a felony, denying applicants the right to vote or, occasionally, just suspending it during confinement. Felony convictions carry other serious legal consequences. (See Chapter 2-C.)

A principal disability arising from a felony conviction is its effect upon employment opportunities. Often, this job discrimination is reinforced by statute. States license many occupations, often requiring good moral character, so applicants were often barred from such occupations as attorney, accountant, architect, dry cleaner, and barber.

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(Case 3-53) Applicant, a third year law student, was told he could not be admitted to the bar because of his draft conviction.

Other severe restrictions exist in the public employment sector.

(Case 3-54) Applicant graduated from college, but was unable to find work because of his draft conviction. He qualified for a job with the Post Office but was then informed that his draft conviction rendered him ineligible.

(Case 3-55) Applicant qualified for a teaching position, but the local board of education refused to hire him on the basis of his draft conviction. The board later reversed its position at the urging of applicant's attorney and the local Federal judge.

Despite these handicaps, civilian applicants fared reasonably well in the job market. Over three out of four were employed either full time (70%) or part-time (7%) when they applied for clemency. Only two percent were unemployed at the time of their application. The remainder had returned to school (14%), were presently incarcerated (2%), or were furloughed by prison officials pending disposition of their cases by our Board (5%). Almost half (45%) had married, and many (20%) had children or other dependents.

C. Military Applicants

Despite the popular belief that Clemency Board applicants were mostly war resisters, the vast proportion of military applicants were not articulate, well-educated opponents of the war. Less than one percent had applied for a conscientious objector draft classification before entering the military. Less than five percent attributed their offenses to opposition to the Vietnam War. Their average IQ (98) was very close to the national average. Nonetheless, over three-quarters dropped out of high school before joining the service, and less than one-half of one percent graduated from college. They were raised in small towns or on farms (40%). Generally, they came from disadvantaged environments. Many grew up in broken homes (60%), struggling to cope with low incomes (57%). A disproportionate percentage were black (21%) or Spanish-speaking (3.5%). A few (0.1%) were women.

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In the discussion which follows, we trace the general experiences of military applicants. We look first at the circumstances of their induction or enlistment and their early experiences in the military. We then describe how 27% of them served in Vietnam, many with distinction. After considering the circumstances of their AWOL offenses, we

look at their experiences with the military justice system. Finally, we describe the impact of their bad discharges. Almost two-thirds were in the Army, so much of the discussion about military procedures, especially the military justice system, pertains to the Army, whose procedures were not greatly different from those of the other services.

Induction or Enlistment in the Military

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

Their reasons for enlistment ranged from draft pressure to the desire to learn a trade, to the simple absence of anything else to do. Others saw the military as an opportunity to become more mature.[20]

(Case 3-56) Applicant enlisted after high school because he did not want to go to college or be inducted.

(Case 3-57) Applicant enlisted to obtain specialized training to become a microwave technician.

(Case 3-58) Applicant enlisted at age 17 because he wanted "a place to eat" and a "roof over (his) head."

(Case 3-59) 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 increased. Many recruiters helped arrange entry into preferred military occupational specialties and geographic areas of assignment. However, some military applicants claimed, often without corroboration, that their unauthorized absences were motivated by the services' failure to assign them to the positions they themselves wanted.

(Case 3-60) 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.

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Before the Vietnam War, the military generally did not accept persons for enlistment or induction if they had Category IV (below the 30th percentile) scores on their Armed Forces Qualifying Test for intelligence (AFQT);[21] some who scored between the 15th and 30th percentiles were brought into the service under special programs.[22] In August

1966, Secretary of Defense Robert McNamara announced Project 100,000 to use the training establishment of the Armed Forces to help certain young men become more productive citizens upon return to civilian life. Project 100,000 extended the opportunity and obligation of military service to marginally qualified persons by reducing mental and physical standards governing eligibility. Persons scoring as low as the 10th percentile on AFQT tests became eligible for military service. During its first year, 40,000 soldiers entered the military under this program. For two years thereafter, it lived up to its name by enabling 100,000 marginally qualified soldiers to join the service each year.[23]

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 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.[24] Some learned marketable skills, and 13% of our applicants 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.

(Case 3-61) 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 3-62) Applicant had an 8th grade education, an AFQT of 11, and a GT of 62. Coming from a broken home, he was enthusiastic about his induction into the Army, believing that he would gain technical training and financial security. His lack of physical ability and difficulties in reading and writing caused him to fail basic training. He was in basic training for nine months before he was sent to Advanced Individual Training (AIT) as a tank driver. He continued to have learning problems in advanced training. According to applicant, this problem was compounded by the ridicule of other soldiers upon their discovery that he had 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, many of our applicants would probably never have been in the service were it not for Project 100,000.

The Category IV applicants tended to be from disadvantaged backgrounds. Compared to other applicants, they were predominantly Black or Spanish-speaking (42% of

Category IV versus 18% of all other applicants) and grew up in cities (55% versus 44%). Their families struggled with low incomes (72% versus 49%), and they dropped out of high school (75% versus 56%). The quality of their military service was about the same as that of other military applicants: they did not have significantly more punishments for non-AWOL offenses (53% versus 52%) or non-AWOL charges pending at time of discharge (13% versus 12%). Despite this, a greater percentage received administrative Undesirable Discharges (68% versus 57%).

Of course, we saw only the Category IV soldiers who did not succeed in service. The experiences of the 4,000-plus Category IV applicants do not reflect the performance of all Category IV soldiers, including the quarter-million men brought into the service by Project 100,000. Many of our Category IV applicants served well before committing their qualifying AWOL offenses.

(Case 3-63) Applicant, a Black male from a family of 12 children, dropped out of high school before his induction into the Army. His GT was 114 and his AFQT was 18 (Category IV). Applicant spent 6 years on active duty, including service as a military policeman in Korea. Following a three month stint in Germany, he served an 8 month tour in Vietnam as an assistant platoon leader. On a second tour in Vietnam, where he served as a squad leader and chief of an armored car section, he earned the Bronze Star for Heroism. He went AWOL while on leave from his second tour in Vietnam.

Early Experiences in the Military

The military applicant's first encounters with the military were in basic training.[25] It was during these first weeks that they 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.

Although the applicants' general emotional problems--homesickness and the trauma of separation or a different life-style--were no different from those which other young men have always faced upon entering the service, some did not adjust well to the demands placed on them:

(Case 3-64) 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, suffering numerous wounds.

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

(Case 3-65) Applicant, of Spanish heritage, was subjected to physical and verbal abuse during boot camp. He recalls being called "chili bean" and "Mexican chili." His ineptness in boot camp also led to ridicule. He wept at his court-martial when he recalled his early experiences that led to his AWOL.

(Case 3-66) Applicant's version of his problems is that he could no longer get along in the Marine Corps. Other Marines picked on him because he was Puerto Rican, wouldn't permit him to speak Spanish to other Puerto Ricans, and finally tried to get him into trouble when he refused to let them push him around.

(Case 3-67) Applicant was a high school graduate with a Category I AFQT score and GT (IQ test) score of 145. She complained that other soldiers harrassed her without cause and accused her of homosexuality. She went 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 the military applicants were discharged because of an AWOL commencing during basic training.

Following basic training, those in the Army transferred to another unit for advanced or on-the-job training. Altogether, ten percent were discharged for an AWOL begun during advanced training. Individual transfers resulted in breaking up units and, frequently, the ending of personal friendships. The AWOL rate tended to be higher for soldiers in transit to new assignments.[26] Some underwent training in jobs which they found unsatisfying, and others were given details which made no use of their newly-learned skills. A few applicants thought the service owed them an obligation to meet their preferences; when the military used them in other necessary functions, they went AWOL.

(Case 3-68) 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 commencement of active duty. Once on active duty, applicant was informed that his Military Occupational Speciality (MOS) could not be changed. He claimed that he was unsuccessful in obtaining the help of his platoon sergeant, company commander, and chaplain, so he went AWOL.

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Military life, especially for those of low rank, requires the performance of temporary, menial duties for which no training is required, such as kitchen patrol (KP) and cleanup work. Some of our applicants spurned these responsibilities and went AWOL.

(Case 3-69) Applicant found himself pulling details and mowing grass rather than working in his military occupational specialty. He then went AWOL and did not return for over three years.

After several months in the military, some were still having difficulty adjusting to the many demands of military life. They had difficulty reconciling themselves to a daily routine which had to be followed, superiors who had to be treated with respect, and orders which had to be obeyed. Over half (53%) were punished for one or more military offenses in addition to AWOL. Only three percent were punished for military offenses comparable to civilian crimes such as theft or vandalism.

(Case 3-70) 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 nonjudicial punishments and three Special Court-Martials.

Altogether, almost half (47%) of the military applicants were discharged for AWOL offenses occurring during stateside duty, other than training, which did not follow a Vietnam tour.

Requests for Leave, Reassignment, or Discharge

Many military 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 3-71) During his 4-1/2 months of creditable service, applicant was absent without official leave on five occasions. He was motivated in each instance by his concern for his grandmother who was living alone and whom he believed needed his care and support.

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The military had remedies for soldiers with these problems. They could request leave, reassignment, 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 available to render assistance

within their means. Despite the help applicants received, some did not come back when their personal problems were resolved.

(Case 3-72) Applicant requested, and was granted, an emergency leave due to his mother's death. Applicant did not return from leave. He was apprehended one year and eight months later.

The Department of Defense discovered that 58% of its clemency applicants sought 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.[27] Many Clemency Board applicants never tried to solve their problems through military channels. Others indicated that, before going AWOL, they tried some of these channels but failed to obtain the desired relief.

(Case 3-73) Applicant's wife was pregnant, in financial difficulties, and facing eviction. She suffered from an emotional disorder and nervous problems. Applicant's oldest child was asthmatic and epileptic, having seizures that sometimes resulted in unconsciousness. Applicant's request for a transfer and a hardship discharge which were denied. He then went AWOL.

Requests for leave were matters within a commanding officer's discretion. However, leave was earned at the rate of 30 days per calendar year, 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, so a soldier who had used up his advance leave had to go AWOL to solve his problems. This was especially true if the enormity of the problem made one period of leave insufficient.

(Case 3-74) While applicant was home on leave to get married, a hurricane flooded his mother-in-law's house, in which he and his wife were staying. His belongings and almost the entire property 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 unlivable 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.

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Of military applicants who requested leave or reassignment, roughly 15% had their request approved. Slightly over one percent were granted leave or reassignment

to help them solve the problem which later led to their AWOL. By contrast, nine percent had their leave or reassignment requests turned down. Their requests were evaluated on the basis of information available to commanding officers, who had to weigh the soldier's personal needs against the needs of the military.

The hardship discharge offered a permanent solution to the conflict between a soldier's problem and his military obligations. To get a hardship discharge, he had to submit a request in writing to his commanding officer, explaining and documenting the nature of his problem and how only a discharge would help him solve it. The Red Cross was often asked for assistance in substantiating the request. Some did not have the patience to proceed through channels.

(Case 3-75) 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 went AWOL.

The soldier who was conscientiously opposed to war could apply for in-service conscientious objector status. Very few of our applicants did: only one percent took any initiative to obtain this in-service status, and only one-half of one percent made a formal application. However, the Clemency Board found five percent to have committed their offenses for conscientious reasons. Some applicants alleged that they were unaware of what they had to do to get such status, probably as a result of their misunderstanding of military regulations.

(Case 3-76) 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, and that he would first have to demonstrate that he was a conscientious objector. He then went AWOL to prove his beliefs. Following his court-martial conviction for that brief AWOL, he requested a discharge as a conscientious objector. His request was denied.

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Military applicants could have submitted two types of conscientious objector applications. One resulted in reassignment to a noncombatant activity, while the other provided for a discharge under honorable conditions. Each