The original documents are located in Box 2, folder "Clemency Law Reporter (1)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

MEMORANDUM

TO : Senator Goodell
Larry Baskir
Bob Knisely
Gratchen Handwerger
Bob Horn
Brenda Hamer
Ray Mitchell
John Foote
Assistant General Counsels

FROM: Bill Strauss

RE : Comments on Draft on Clemency Law Reporter

Enclosed is a draft of the first issue of the Clemency Law Reporter. Please make comments and give them to me by Monday, June 2, 9:00 a.m.

CLEMENCY LAW REPORTER

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

VOL.1 NUMBER ONE - JUNE 2, 1975

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
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TO THE PROFESSIONAL STAFF:

Commencing with this issue, we shall be distributing copies of the Clemency Law Reporter to all professional staff on a weekly basis, or as new issues compel.

As professionals, we are all concerned about the substantive aspects of the work we perform. By analyzing policy precedents developed by the Board and procedures affecting the disposition of cases, it is hoped that the Reporter will keep all attorneys abreast of changes that will be useful in the preparation of case summaries. Legal questions and professional matters of interest to all will appear in the Reporter. Your contributions, suggestions and ideas are welcomed.

Also, let me take this opportunity to express my personal thanks for the professional quality of your work thus far. I continue to be impressed by the positive attitude you have brought to this historic effort.

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Chairman

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HIGHLIGHTS

- MESSAGE FROM THE CHAIRMAN
- MESSAGE FROM THE GENERAL COUNSEL
- YOUTH CORRECTIONS ACT
  Mike Remington discusses the relationship of the YCA to the PCB. (Legal Notes)
- MILITARY AWARDS
  A partial listing of military awards and how they are earned. (Legal Notes)
- CASES FLAGGED BY PANEL COUNSELS
  Handling cases outside the decision norm. (Legal Notes)
- NELSON-JAVITS BILL
  A Capitol Hill proposal would extend the life of the PCB. (Policy Notes)
- AGGRAVATING-MITIGATING FACTORS
  A "Kodak-Lohff" analysis of Aggravating-Mitigating Factors. (Policy Precedents)

INTRODUCTION

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The Clemency Law Reporter is prepared by the PCB Planning, Management and Evaluation Staff. For information, please contact Wil Ebel or Bob Terzian. Room 901, Tel. 634-4823.

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PRESIDENTIAL CLEMENCY BOARD
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Lawrence M. Baskir

Lawrence M. Baskir,
General Counsel

LEGAL NOTES

The Legal Notes Section will be devoted to information of professional interest to the PCB attorney. It will include such matters as new procedural developments of common concern, and analysis of legal issues current to the PCB. Contributions of ideas and work product from the staff are especially critical to a full understanding of the law applicable to the PCB.

FEDERAL YOUTH CORRECTIONS ACT AND PRESIDENTIAL CLEMENCY BOARD

Due to the importance of the Federal Youth Corrections Act (YCA), action attorneys should note under the category "Current Sentence", any sentence imposed pursuant to YCA. In addition, under the heading "Present Status", the setting-aside of a conviction pursuant to the provisions of the Youth Corrections Act should be noted.

Examples: Current Sentence -- 2 years probation, provided that applicant perform alternate service under provisions of YCA.

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PURPOSES

The Federal Youth Corrections Act can be described as the most comprehensive federal statute concerned with sentencing. United States v. Coefield, n. 2, 476 F. 2d 1152, 1156 (D.C. Cir. 1973, en banc). It is in large part the outgrowth of recommendations made over 30 years ago by the Judician Conference of the United States. The goals and principles of the Act are described in the following statement:

> "The underlying theory of the act is to substitute for retributive punishment methods of training and treatment designed to correct and prevent criminal tendencies. The plan of the act departs from the merely punitive idea of dealing with youthful offenders and looks primarily to the objective idea of rehabilitation." (Subcommittee report to the Judician Conference of Senior Court Judges, 1941).

(See also Rowls v. United States, 218 F. Supp. 849 (D.C. Mo. 1963).

Motivation for the theory behind the act was provided by two principal factors: (1), the period of life between 16 and 22 years of age was considered to be a time when unique factors operated to produce habitual criminals; and (2), prior existing methods of treating youths with criminal tendencies were found to be inadequate to prevent recidivism.

CONSTITUTIONALITY

The constitutionality of the Youth Corrections Act has been upheld by the courts. Arguments that congressional delegation of its authority to the federal district courts is unconstitutional, if this delegation fails to set standards and specify policies amenable to administration by the

federal courts, have failed. United States v. Baker, 429 F. 2d 1344 (7th) Cir. 1970). It has been consistently recognized that Congress has great latitude to grant broad discretionary powers to the federal courts. The very role that the courts play in modern, democratic society necessitates that they exercise discretion in carrying out their assigned functions.

It should be recognized, however, that this discretion is not unfettered. It was clear from the beginning that the Youth Corrections program attempted to establish among the criteria which judges would consider in sentencing eligible offenders, one that was paramount -- that of rehabilitation. Thus, in this sense, the discretion of the sentencing judge is circumscribed concerning youth offenders. The requirement contained in § 5010(d) of the Act provides the basis for this policy by stating that otherwise eligible offenders should be deprived of an opportunity for rehabilitation if they could not derive benefit from it. Dorszynski v. United States, - U.S.- (decided June 26, 1974). Consequently, to sentence an individual under the Youth Corrections Act, the district court judge has to make an important determination.

Concerning the relationship of the YCA to the policies and decisions of the PCB, two questions arise. First, what is the relationship between having a conviction set aside under YCA and receiving a Presidential Pardon? Secondly, if the applicant has already had his conviction set aside under the YCA, should the PCB ask the applicant to perform alternative service in return for a Presidential Pardon?

QUESTIONS
I

The "setting-aside" of a conviction under the YCA occurs by operation of law. 18 U.S.C. § 5021. Once an offender has been sentenced under the Youth Corrections Act, he is entitled to have his conviction set aside "by law", and not as a matter of "discretion". The § 5021(a) requirement, that upon unconditional discharge before expiration of the maximum sentence imposed the conviction shall automatically be set aside, cannot be over-emphasized. This element gives the Act an operative effect. It represents an important difference between an ordinary criminal conviction which can only be relieved by a Presidential Pardon and then only in a limited fashion. See Tatum v. United States, 310 F. 2d 854 (D.C. Cir. 1962). As the Tatum court stated:

> "The provision of the Federal Youth Corrections Act, 18 U.S.C. § 5021 (1958), appears to provide greater relief than would a Presidential Pardon of the same offense. The former acts to expunge the conviction and the record, while the latter 'releases the offender from all disabilities imposed by the offense, and restores to him all his civil rights.' Knote v. United States, 95 U.S. 149, 153 (1877)."

(It is noted that Chief Justice Burger, then a Circuit Judge, participated in the per curium Tatum decision).

The Ninth Circuit recently developed this theme by finding that an alien could not be deported on the basis of a narcotics conviction after receipt of certificate that his conviction had been expunged pursuant to the Federal Youth Corrections Act, despite the presence of a statute providing that neither executive pardon nor judicial recommendation of leniency could prevent deportation of an alien for a narcotics conviction. In Mestre Morera v. United States Immigration and Naturalization Service, 462 F. 2d 1030 (1972), the court stated:

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> Pardon and leniency at most restore to an offender his civil rights; neither is as clearly directed as the Youth Corrections Act toward giving him a second chance, free from all taint of a conviction."

The conclusion is unavoidable, therefore, that having a sentence set aside under the YCA is more important and restorative than a Presidential Pardon.

This, however, does not resolve the problem for the PCB. There are hundreds of applications from individuals who have had their convictions set aside under the YCA. These people evidently feel that an executive pardon, on top of a "judicial" pardon, will benefit them. They are probably correct in this contention. First, the public usually perceives of a Presidential Pardon as being more than a judicial pardon. Prospective employers, for example, may lend more credence to a pardon conferred by the President of the United States than the setting-aside of a conviction by a federal district court. Second, the states have not accorded total respect to the dictates of the YCA. A recent poll of the attorneys general in the 50 states indicates that they, for the most part, do not feel bound to recognize the setting-aside of a conviction as the equivalent of no conviction. Thus, the YCA insures that federal liabilities are set aside, but not state. Since the state level is more meaningful in such areas as education and licensing, it would appear that a Presidential Pardon could have an extremely important effect here.

In conclusion, the Board is correct in taking jurisdiction of cases in which the individual has had his sentence set-aside under YCA.

II

The action attorney should be aware of a second question. Should the PCB ask an individual to perform alternative service in return for a Presidential Pardon if that person has already had his conviction set aside? If answered in the affirmative, the request for alternative service should be accompanied by written notice to the applicant that a Presidential Pardon will confer no more legal benefits (especially at the federal level) than those which he has already received under the Youth Corrections Act.

The following list is a brief explanation of the military awards and decorations that may be encountered by the Presidential Clemency Board. This list does not purport to be exhaustive, but only illustrative.

National Defense Service Medal (NDSM): Awarded to those personnel on active duty for periods designated by the President.

Vietnam Service Medal (VSM): A personal decoration awarded to those personnel who served in, or off the contiguous waters of, or in the airspace over, the Republic of Vietnam.

Vietnamese Campaign Medal (VCM): A personal award by the Vietnamese government to personnel on active duty who serve six months or more in the Republic of Vietnam.

Vietnamese Cross of Gallantry with Palm (VCG): This is a unit or individual citation awarded by the Vietnamese government to American units or soldiers for outstanding combat service.

Presidential Unit Citation (PUC): Awarded to American units designated by the President for outstanding combat service.

Navy Unit Citation (NUC): Awarded to Navy and Marine Corps units designated by the Secretary of the Navy for outstanding combat service.

Meritorious Unit Citation (MUC): Awarded to American units designated by the Secretaries of the Army and Navy for meritorious service in the Republic of Vietnam.

Valorous Unit Citation (VUC): Awarded to Army units designated by the Secretary of the Army or designated commanders for valorous service in the Republic of Vietnam.

Combat Action Ribbon (CAR): Awarded to Navy and Marine Corps personnel, as a personal decoration, for service in hostile fire zones in the Republic of Vietnam.

Army Commendation Medal (ACM): Awarded to Army personnel for any meritorious service. "V" device indicates personal heroism in a combat zone. It is a personal decoration.

Navy Commendation Medal (NCM): Awarded to Navy and Marine Corps personnel for meritorious or heroic action. It is a personal decoration. "V" device indicates awarded for active duty in a combat zone.

Air Medal (AM): Awarded to personnel for meritorious achievement while participating in aerial flight in a combat zone. Is a personal decoration.

Purple Heart Medal (PHM): Awarded as a result of wounds sustained in action against enemy forces. Is a personal decoration.

Bronze Star Medal (BCM):

Army - Awarded for outstanding performance of duty in combat zone. "V" device indicates acts of heroism and bravery in action against the enemy. Personal decoration.

Navy & Marine Corps - Awarded for outstanding performance of duty or acts of heroism against the enemy. "V" device indicates awarded for action/duty in a combat zone. Personal decoration.

Silver Star Medal (SS): Awarded for gallantry in action against enemy forces. Is the third highest award for gallantry. Personal decoration.

SOP ON THE FLAGGING OF
CASES FOR THE SPECIAL DOCKET

All cases that come before a panel or the full Board are being analyzed to insure consistency in the disposition of cases. The following is a description of the process designed to implement this analysis.

Following the recommended disposition of a case by a panel, either the Action Attorney or the Panel Counsel will identify those cases they believe fall outside the decisional norm. The Panel Counsel will note the case number and flag the case for reconsideration by the Planning, Management and Evaluation Team (PM&E). The Panel Counsel or the Action Attorney will then complete a Special Docket Disposition Form specifying the alleged basis for the inconsistency and the flagging of the case. This form will be sent to the PM&E staff.

The disposition sheets prepared by the scribes will indicate that a Special Docket referral has been initiated, and in an indented line below the case number, the panel decision will be shown.

The scribe coordinator will prepare a separate list of cases flagged for the Special Docket and forward it to Bill Strauss, Associate General Counsel for Planning, Management and Evaluation.

The PM&E staff will consider individually each case referred to it, along with cases which are identified in a separate statistical analysis known as the Post Audit. The PM&E staff will recommend to the General Counsel a specified disposition to include a) grant review, b) deny review, c) indicate the recommended alteration in the Board disposition,d) state a justification for the recommendation.

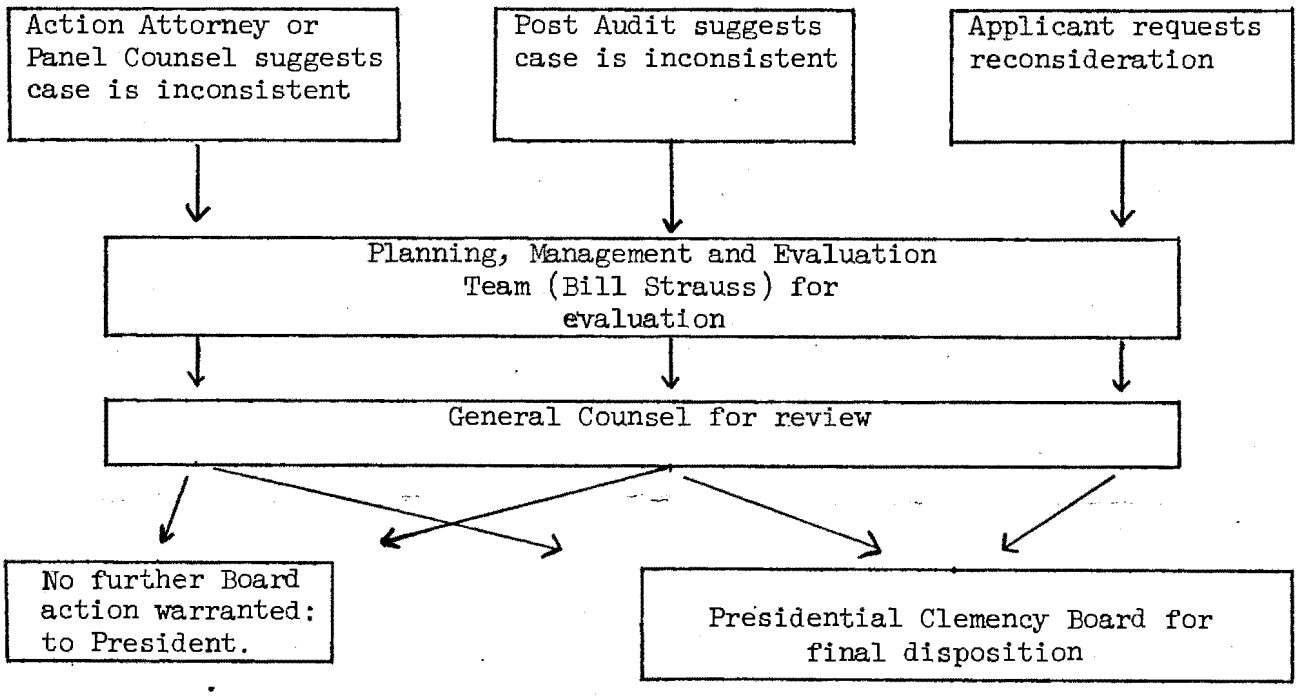
The General Counsel will review the recommendations and Board dispositions and determine whether the requested reconsideration is warranted. If he decides the case does not merit further Board time, he will remove the case from the Special Docket and order the case referred to the President for

final action. If reconsideration is warranted, the case will be referred to the Board for further consideration.

In those cases in which the applicant requests reconsideration within the 30 day period after he is notified of the President's action, the applicant will submit a request for reconsideration. The Action Attorney will prepare the Special Docket Disposition Form and place it in channels described above. However, the General Counsel will only make a recommendation to the Board; he will not render a decision that will remove the case from the Special Docket.

When a Board member or a panel requests that the case be considered by the full Board, the panel member will complete the Special Docket Disposition Form for introduction into the channels described above. Again, the General Counsel will make a recommendation on disposition to the Board, but will not remove the case from the Special Docket.

Finally, the Board will make a final disposition of each of the Special Docket cases.



SPECIAL DOCKET DISPOSITION FORM

Case Number_____ Action Attorney_____

Date of Board Panel Disposition_____

Panel Counsel_____

Case referred to special docket by:

_____Action attorney

_____Applicant

_____Panel Counsel

_____Board Member _____

_____Planning, Management and Evaluation staff

_____Other _____

Baseline recommended by Board panel:

Aggravating factors cited by Board panel:

Mitigating factors cited by Board panel:

Reason for Special Docketing:

Recommendation:

POLICY NOTES

The Clemency Law Reporter will include a Policy Notes Section that will highlight items of current interest. You can help us by calling our attention to articles dealing with clemency that appear in newspapers and periodicals and that you find relevant to the PCB Staff effort.

We would be pleased to consider any staff-submitted manuscript (not over 1,000 words, please) for possible publication in the Clemency Law Reporter. Send to Wil Ebel or Bob Terzian. Room 901, Tel, 634-4823.

NELSON-JAVITS BILL

Senator Gaylord Nelson (D-WI) and Senator Jacob Javits (R-NY) have co-sponsored a bill that would extend the life of the PCB and would give PCB jurisdiction over matters now handled by Defense, Justice, and Transportation Departments. House hearings have been completed; Senate Government Operations Committee hearings will be held soon after the Senate reconvenes. Three major elements of the Nelson-Javits Bill:

-The clemency application deadline is removed

-The program is reorganized and PCB gains jurisdiction over all cases

-A 30 day non-immigration visa is available to military deserters and draft evaders.

While in the US under the 30 day non-immigration visa, an individual would be immune from arrest or prosecution for draft evader or military desertion offenses. The purpose of the 30 day visa is two-fold: it would permit the family to be reunited for a short period and it would permit the potential applicant to make direct contact with authorities.

The Nelson-Javits Bill contains no provision for alternative service.

LIBRARY NOTES

The Planning, Management and Evaluation Staff is building a PCB Library. The library will be housed in Room 901 (turn left as you leave the elevators). The PCB Library will serve three purposes:

-Reference library for the Professional Staff

-Research material for PCB's final report to the President

-Historical data to be archived.

All staff is invited to read these materials, but we do ask that you not remove or borrow any items from the library.

RECENT ACQUISITIONS OF THE PCB LIBRARY

POLITICAL PRISONERS IN AMERICA
Hon. Charles E. Goodell

PROPHETS WITHOUT HONOR
Public Policy and the Selective Conscientious Objector
John A. Rohr

PROTEST AND DISCONTENT
Essays on Protest and Discontent
Bernard Crick and William A. Robson, Editors

THE NEW EXILES
American War Resisters in Canada

THE RESISTANCE
The Draft Resistance Movement, 1966-1971
Michael Ferber and Staughton Lynd

THEY CAN'T GO HOME AGAIN
The Story of America's Political Refugees
Richard L. Killmer, Robert S. Lecky, Debrah S. Wiley

WAR RESISTERS - CANADA
The World of the American Military-Political Refugees
Kenneth Fred Emerick

WHEN CAN I COME HOME?
A Debate on Amnesty for Exiles, Anti-war Prisoners and Others
Murray Polner

POLICY PRECEDENTS

The Policy Precedents Section of the Clemency Law Reporter will include periodic updates of the Kodak-Lohff material analyzing the Board's application of aggravating and mitigating factors. This material is prepared for the use of the PCB Staff and is intended to provide guidance to the Staff to aid in the preparation of case summaries and other appropriate actions before the Presidential Clemency Board.

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

June 19, 1975

MEMORANDUM FOR: BOARD MEMBERS

FROM: LAWRENCE M. BASKIR

SUBJECT: CLEMENCY LAW REPORTER

Beginning a few weeks ago, I felt it was necessary that we prepare a periodical document for the benefit of the Board's legal staff which would keep them up to date on Board policy and similar matters. We have already issued two volumes of this new Clemency Law Reporter. Among the items we have included have been history of Presidential clemencies, materials on military justice, legal memos on the problem of Board jurisdiction over aliens, and explanations of Board policy on the aggravating and mitigating factors.

Although the Clemency Reporter was initially prepared for the guidance of the staff, I believe the Board members may find it of interest, and so we are distributing copies to you as well. I hope if you have any suggestions, criticisms, or corrections you will let me know about it. Also, it you have any items which you would like presented to the staff, please tell me so that they can be included in the future issues of the Reporter.

One of the more difficult things the Reporter tries to do is to summarize Board policy with respect to a host of matters. Because of the delay between Board decision-making and the publication of a new issue of the Reporter, the Reporter may not always be up to date or reflect Board policy as accurately as I would like. Then, too, it may be that I may misinterpret Board positions on some matters which are included in the Reporter. I hope you will bear with these interpretations and bring them to my attention when you notice them, so we can send out better guidance to the staff.

I hope you will enjoy reading the Reporter.

P.S. I understand you have the last two volumes of the Reporter; the first volume is attached.

CLEMENCY LAW REPORTER

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> Pardon and leniency at most restore to an offender his civil rights; neither is as clearly directed as the Youth Corrections Act toward giving him a second chance, free from all taint of a conviction."

The conclusion is unavoidable, therefore, that having a sentence set aside under the YCA is more important and restorative than a Presidential Pardon.

This, however, does not resolve the problem for the PCB. There are hundreds of applications from individuals who have had their convictions set aside under the YCA. These people evidently feel that an executive pardon, on top of a "judicial" pardon, will benefit them. They are probably correct in this contention. First, the public usually perceives of a Presidential Pardon as being more than a judicial pardon. Prospective employers, for example, may lend more credence to a pardon conferred by the President of the United States than the setting-aside of a conviction by a federal district court. Second, the states have not accorded total respect to the dictates of the YCA. A recent poll of the attorneys general in the 50 states indicates that they, for the most part, do not feel bound to recognize the setting-aside of a conviction as the equivalent of no conviction. Thus, the YCA insures that federal liabilities are set aside, but not state. Since the state level is more meaningful in such areas as education and licensing, it would appear that a Presidential Pardon could have an extremely important effect here.

In conclusion, the Board is correct in taking jurisdiction of cases in which the individual has had his sentence set-aside under YCA.

II

The action attorney should be aware of a second question. Should the PCB ask an individual to perform alternative service in return for a Presidential Pardon if that person has already had his conviction set aside? If answered in the affirmative, the request for alternative service should be accompanied by written notice to the applicant that a Presidential Pardon will confer no more legal benefits (especially at the federal level) than those which he has already received under the Youth Corrections Act.

--Mike Remington

The following list is a brief explanation of the military awards and decorations that may be encountered by the Presidential Clemency Board. This list does not purport to be exhaustive, but only illustrative.

National Defense Service Medal (NDSM): Awarded to those personnel on active duty for periods designated by the President.

Vietnam Service Medal (VSM): A personal decoration awarded to those personnel who served in, or off the contiguous waters of, or in the airspace over, the Republic of Vietnam.

Vietnamese Campaign Medal (VCM): A personal award by the Vietnamese government to personnel on active duty who serve six months or more in the Republic of Vietnam.

Vietnamese Cross of Gallantry with Palm (VCG): This is a unit or individual citation awarded by the Vietnamese government to American units or soldiers for outstanding combat service.

Presidential Unit Citation (PUC): Awarded to American units designated by the President for outstanding combat service.

Navy Unit Citation (NUC): Awarded to Navy and Marine Corps units designated by the Secretary of the Navy for outstanding combat service.

Meritorious Unit Citation (MUC): Awarded to American units designated by the Secretaries of the Army and Navy for meritorious service in the Republic of Vietnam.

Valorous Unit Citation (VUC): Awarded to Army units designated by the Secretary of the Army or designated commanders for valorous service in the Republic of Vietnam.

Combat Action Ribbon (CAR): Awarded to Navy and Marine Corps personnel, as a personal decoration, for service in hostile fire zones in the Republic of Vietnam.

Army Commendation Medal (ACM): Awarded to Army personnel for any meritorious service. "V" device indicates personal heroism in a combat zone. It is a personal decoration.

Navy Commendation Medal (NCM): Awarded to Navy and Marine Corps personnel for meritorious or heroic action. It is a personal decoration. "V" device indicates awarded for active duty in a combat zone.

Air Medal (AM): Awarded to personnel for meritorious achievement while participating in aerial flight in a combat zone. Is a personal decoration.

Purple Heart Medal (PHM): Awarded as a result of wounds sustained in action against enemy forces. Is a personal decoration.

Bronze Star Medal (BCM):

Army - Awarded for outstanding performance of duty in combat zone. "V" device indicates acts of heroism and bravery in action against the enemy. Personal decoration.

Navy & Marine Corps - Awarded for outstanding performance of duty or acts of heroism against the enemy. "V" device indicates awarded for action/duty in a combat zone. Personal decoration.

Silver Star Medal (SS): Awarded for gallantry in action against enemy forces. Is the third highest award for gallantry. Personal decoration.

Armed Forces Expeditionary Medal (AFEM): A unit citation awarded for combat or combat support in a foreign nation, the adjacent waters or airspace thereover. In most instances it will be for service in the Republic of Korea.

Combat Infantryman Badge (CIB): Awarded to Army personnel as a personal decoration for service in an infantry unit actively engaged in ground combat.

-- Bob Terzian

SOP ON THE FLAGGING OF
CASES FOR THE SPECIAL DOCKET

All cases that come before a panel or the full Board are being analyzed to insure consistency in the disposition of cases. The following is a description of the process designed to implement this analysis.

Following the recommended disposition of a case by a panel, either the Action Attorney or the Panel Counsel will identify those cases they believe fall outside the decisional norm. The Panel Counsel will note the case number and flag the case for reconsideration by the Planning, Management and Evaluation Team (PM&E). The Panel Counsel or the Action Attorney will then complete a Special Docket Disposition Form specifying the alleged basis for the inconsistency and the flagging of the case. This form will be sent to the PM&E staff.

The disposition sheets prepared by the scribes will indicate that a Special Docket referral has been initiated, and in an indented line below the case number, the panel decision will be shown.

The scribe coordinator will prepare a separate list of cases flagged for the Special Docket and forward it to Bill Strauss, Associate General Counsel for Planning, Management and Evaluation.

The PM&E staff will consider individually each case referred to it, along with cases which are identified in a separate statistical analysis known as the Post Audit. The PM&E staff will recommend to the General Counsel a specified disposition to include a) grant review, b) deny review, c) indicate the recommended alteration in the Board disposition,d) state a justification for the recommendation.

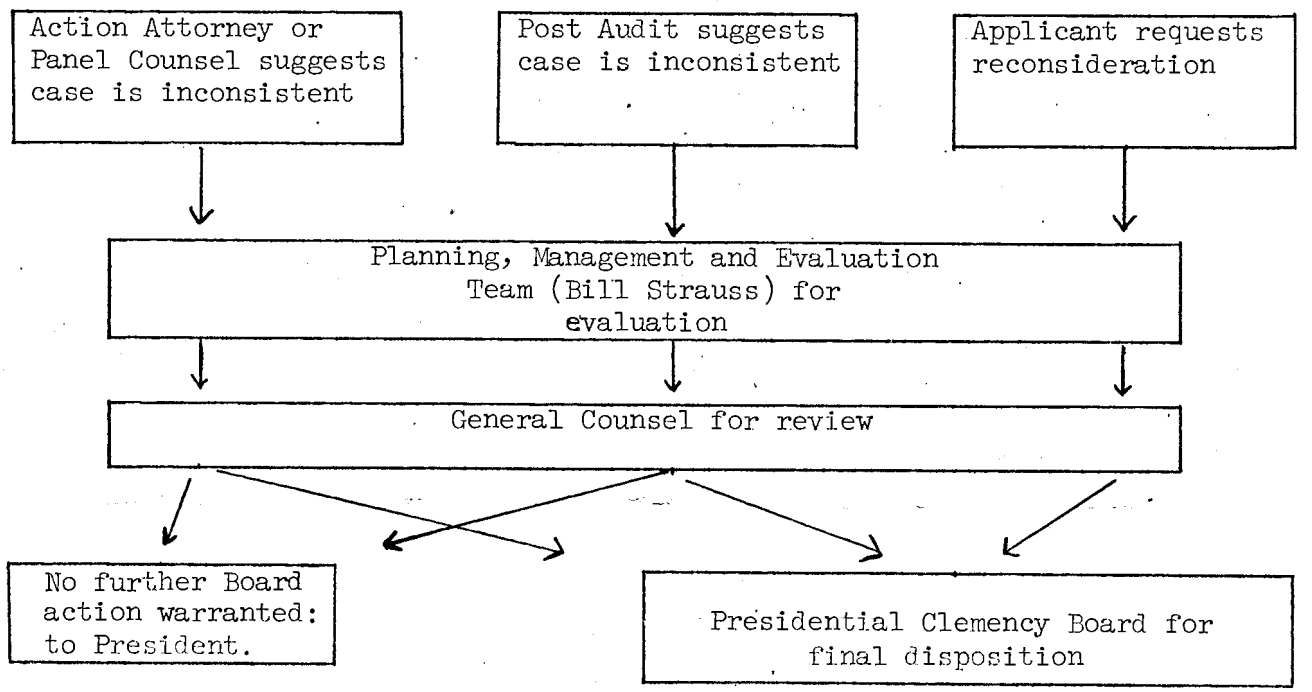
The General Counsel will review the recommendations and Board dispositions and determine whether the requested reconsideration is warranted. If he decides the case does not merit further Board time, he will remove the case from the Special Docket and order the case referred to the President for

final action. If reconsideration is warranted, the case will be referred to the Board for further consideration.

In those cases in which the applicant requests reconsideration within the 30 day period after he is notified of the President's action, the applicant will submit a request for reconsideration. The Action Attorney will prepare the Special Docket Disposition Form and place it in channels described above. However, the General Counsel will only make a recommendation to the Board; he will not render a decision that will remove the case from the Special Docket.

When a Board member or a panel requests that the case be considered by the full Board, the panel member will complete the Special Docket Disposition Form for introduction into the channels described above. Again, the General Counsel will make a recommendation on disposition to the Board, but will not remove the case from the Special Docket.

Finally, the Board will make a final disposition of each of the Special Docket cases.



-- Bob Terzian

SPECIAL DOCKET DISPOSITION FORM

Case Number_____

Action Attorney_____Telephone_____

Date of Board Panel Disposition_____

Board Members Present_____

Panel Counsel_____

Case referred to special docket by:

_____Action attorney

_____Applicant

_____Panel Counsel

_____Board Member_____

_____Planning, Management & Evaluation Staff

_____other_____

Baseline recommended by Board panel:

Aggravating factors cited by Board panel:

Mitigating factors cited by Board panel;

Reason for Special Docketing:

Recommendation:

NELSON-JAVITS BILL

Senator Gaylord Nelson (D-WI) and Senator Jacob Javits (R-NY) have co-sponsored a bill that would extend the life of the PCB and would give PCB jurisdiction over matters now handled by Defense, Justice, and Transportation Departments. House hearings have been completed; Senate Government Operations Committee hearings will be held soon after the Senate reconvenes. Three major elements of the Nelson-Javits Bill:

-The clemency application deadline is removed

-The program is reorganized and PCB gains jurisdiction over all cases

-A 30 day non-immigration visa is available to military deserters and draft evaders.

While in the US under the 30 day non-immigration visa, an individual would be immune from arrest or prosecution for draft evader or military desertion offenses.. The purpose of the 30 day visa is two-fold: it would permit the family to be reunited for a short period and it would permit the potential applicant to make direct contact with authorities.

Other bills offering some broader forms of clemency (or amnesty) have also been introduced. We shall tell you more about these in subsequent issues of the Reporter.

-- Wil Ebel

RECENT ACQUISITIONS OF THE PCB LIBRARY

POLITICAL PRISONERS IN AMERICA
Hon. Charles E. Goodell

PROPHETS WITHOUT HONOR
Public Policy and the Selective Conscientious Objector
John A. Rohr

PROTEST AND DISCONTENT
Essays on Protest and Discontent
Bernard Crick and William A. Robson, Editors

THE NEW EXILES
American War Resisters in Canada

THE RESISTANCE
The Draft Resistance Movement, 1966-1971
Michael Ferber and Staughton Lynd

THEY CAN'T GO HOME AGAIN
The Story of America's Political Refugees
Richard L. Killmer, Robert S. Lecky, Debrah S. Wiley

WAR RESISTERS - CANADA
The World of the American Military-Political Refugees
Kenneth Fred Emerick

WHEN CAN I COME HOME?
A Debate on Amnesty for Exiles, Anti-war Prisoners and Others
Murray Polner

POLICY PRECEDENTS

The Policy Precedents Section of the Clemency Law Reporter will include periodic updates of the Kodak-Lohff analysis of the Boards's application of aggravating and mitigating factors. This initial paper has been prepared on the basis of Board case dispositions through February only, so it does not necessarily reflect current Board policy. You should keep these materials in a loose-leaf binder to permit insertion of new or revised textual analysis.

You should be aware that the Kodak-Lohff analysis makes no attempt to identify which were the controlling facts directly affecting any particular case disposition; nor does it note whether the Board marked any factor as "weak" or "strong." Facts which led to findings of other aggravating or mitigating factors (and which may have had the greatest effect upon the Board's ultimate disposition) have not been included in the summary extracts. Therefore, it is not possible to use the extracts to account for any particular case disposition by the Board.

PRECEDENTS FOR AGGRAVATING

AND

MITIGATING FACTORS

TABLE OF CONTENTS

A. Aggravating Factors:

B. Mitigating Factors:

Aggravating Factors: 1.

Other Adult Convictions - This factor indicates any felony conviction, Summary, Special or General Courtmartial conviction for any offense, either prior to or subsequent to the qualifying offense. Non-judicial punishments, arrests, acquittals, misdemeanors, convictions, set-asides, juvenile convictions, or pre-trial confinements, are not applicable. (A juvenile is aged 16 years or younger unless the record is otherwise clear that it is a youthful offender conviction. Use a one year sentence as a measure of a felony conviction.

Aggravating Factors: 2.

False Statement by Applicant to the Presidential Clemency Board - This factor indicates any willful misrepresentation of a material fact by an applicant in his application form, letters, or other communications to the Board. A material fact is one which could affect a Board determination of baseline, aggravating factors, or mitigating factors. Do not cite mere conflicts unless there is evidence of an intent to mislead.

Example Case #74-388-IJM-M

> In his letter the applicant reports serving in Vietnam and also reports that he was confined one and half years in the stockade without trial. There is nothing in his military file to reflect these facts except an apparently erroneous DD 214 entry. The applicant received a UD on 25 June 1971, after approximately 27 days confinement.

Aggravating Factors: 3.

Use of Force by Applicant Collaterally to AWOL, desertion, on Missing Movement or Civilian Draft Evasion Offense - This factor indicates the use of physical force by an applicant to aid in the commencement or continuation of his offense. The use of force not directly related to a qualifying AWOL or draft offense is not relevant. The Board has not set forward an example of this factor.

Aggravating Factors: 4.

Desertion During Combat or Leaving Combat Zone - This factor indicates that an applicant went AWOL from his unit either during actual enemy attack or before any reasonably anticipated enemy attack. Consideration should be given to the stress caused by combat in evaluating particular cases.

Aggravating Factors: 5.

Evidence that Applicant Committed Offense for Obviously Manipulative and Selfish Reasons - This factor has been applied in a wide range of factual situations. Along with Mitigating #10, it is the most difficult factor to assess and apply. This factor indicates that an applicant committed his qualifying offense for reasons other than conscientious opposition to war, family hardship, or some other reasonable justification. Typically, an applicant to whom this factor applies committed his offense because of personal convenience or whim. This factor can also be present if an applicant goes AWOL to solve a family problem, then fails to return for an unreasonable period of time after the problem is solved. There must be reliable evidence demonstrating selfish purposes for the offense; this cannot be inferred when there is no apparent purpose.

5. Evidence that Applicant Committed Offense for Obviously Manipulative Selfish Reasons.

No. 29. Applicant's parents adopted the Moorish faith and reared the children in the faith. The Muslim faith was the basis of the applicant's refusal to be inducted. Following high school, applicant became associated with a group of other Muslims, known as Outlaw Muslims, because of their delinquent ways (Presentence Report). While a part of this group, he participated in the robbery of the Savings and Loan Office. About that offense, he stated in the Presentence Report that it was motivated by stupidity and that he had acted impulsively in an attempt to affirm his manhood. Circumstances of offense: On 15 Sep 67 applicant refused induction into the Armed Forces. Applicant states in the progress report that Military Service would be inconsistent with his Muslim beliefs.

No.336. Upon receipt of orders assigning him to Korea, applicant went home on leave and stayed there.

No. 386. Applicant was reassigned from Ft. Bragg to Germany and was afraid that the woman he planned to marry would not wait for him. He went AWOL on 19 Feb 72, married his intended wife and voluntarily returned on 16 Jun 72. He commenced another AWOL on 13 Jun 72 and remained absent until he surrendered on 14 Jan 73. He reported that he went home to New York from Ft. Dix on a weekend and had no way to get back.

No. 241. In Jan 1971, a few days before he was due to report to the Army Overseas Replacement Station, Ft. Lewis, Washington, applicant's first wife had locked herself into the bathroom and he could hear water running and bottles rattling. She had threatened to commit suicide unless he promised not to report, as she was positive he was going to Vietnam and would be killed. Applicant subsequently divorced his first wife in July 1971 but did not then return to military control because he had debts he wanted to pay before returning. He remarried his second wife on 2 May 73 and was apprehended by civil authorities in Scotsbluff, Nebraska, on 18 Jul 74.

No. 612. At the time an applicant's letter which was read in its entirety to the Board he stated that he departed AWOL for approximately three months knowing that after that period of time he could come back and request a discharge.

(No. 417) Applicant testified at his court that, before being inducted, he had requested a delay due to his mother's poor mental health and financial condition. He did receive two induction postponements but was subsequently inducted on 10 Mar 69. While in basic training applicant applied for a hardship discharge, however, it was turned down because of insufficient documentation. Shortly thereafter, applicant's mother was hospitalized because of a car accident and he went home on emergency leave. While at home, applicant attempted to gain further documentation for his hardship discharge. At the end of his leave, applicant did not return to his base because his mother was bedridden and there was no one to take care of her and provide for his younger brothers and sisters. He remained in Philadelphia for a year and a half and worked under an alias. He then moved to Virginia because he was afraid that the FBI was going to arrest him. He stated that he held his obligation to his family higher than his obligation to his country. Applicant has numerous AWOLs in his record. Applicant scored 85 on the Armed Forces Qualification Test, placing him in Category II; his GCT score is 120. He began basic training on 5 Dec 68 but never completed it, absenting himself on 28 Dec 68. On 19 Jun 69 applicant was released from a penal re-training facility (Ft. Riley, Kansas) and was ordered to Ft. Pope, Louisiana, to complete his disrupted military training. Applicant never appeared at his new station, choosing to absent himself.

(No. 344) Applicant went UA the first time "just for something to do" (Record of Trail, 17); he left the second because he "got involved in Los Angeles with a woman." The third and fourth times he went UA were to go home and support his family as he was in a no-pay status with the Marine Corps.

(No. 174) After serving three months in Korea, he was on compassionate leave until 8 Feb 67. He has stated that his wife was having illegitimate children and wanted to talk her into being a wife or to grant him a divorce. While at home, his wife sliced his wrist which left him paralyzed. He failed to return at the end of his leave.

(No. 206) Circumstances of offense: According to testimony of the applicant he met his wife, a Danish citizen, shortly after arriving in Germany. She became pregnant and he attempted to obtain permission to marry her. When he was unsuccessful he went AWOL on 14 Oct 66. After spending time in Holland and France, he turned himself in to the American Embassy in Paris on 10 Oct 67. He was

returned to Germany and placed in pretrial confinement but on 11 Dec 67 he escaped and went to Sweden where he applied for asylum on 24 Jan 68. While in Sweden he had numerous arrests on thefts and narcotic charges and received sentence of imprisonment totalling 10 months. He was sentenced to deportation on various dates but was successful in postponing all but the last. As a result of his deportation he was apprehended by military authorities at Kennedy Airport on 11 Oct 72. At his trial on 29 Dec 72 he admitted he had destroyed his ID card and dog tags when he entered Sweden, and had lived with his common-law wife and two children in an anti-war commune.

(No. 243) Applicant began his first AWOL on 25 Aug 66 shortly after his being drafted on 8 Aug 66. Has a history of repeated AWOLs and one for which he received a Dishonorable Discharge began on 18 Oct 68 and ended on 22 Mar 74 by apprehension. His total military service after his first AWOL consisted of approximately one month of creditable service. During the periods of time from Aug 66 until his discharge in Jul 74, when the applicant was not AWOL he was in confinement.

(No. 159) The applicant, in receipt of orders for Vietnam, failed to report to the Overseas Replacement Station, Oakland, California, on 22 Nov 70. He was arrested at his home by FBI agents on 28 Jan 74.

(No. 122) On or about 16 Nov 70 he went UA from Camp Pendleton and did not return to Marine Corps control until 29 Nov 73, when he was apprehended by the FBI. He asserted at the trial that he originally went UA because a man from a rental car agency with whom he had dealt told him to pay the money he owed or he (the rental agent) would "make sure I go to the brig." During the more than three years he was absent he worked several jobs -- one for as long as a year -- and he got married. He used an alias in all activities.

(No. 161) On 18 Sept 69 he went AWOL for over four and one-half years. He told the court in an unsworn statement that he did not have any concrete reason to go AWOL.

(No. 162) Applicant went AWOL on 15 Jan 69 and remained absent until 20 Jun 74 when he was apprehended at home. He said that he went AWOL because he had injured his arm during a parachute jump, and that since the Army doctors could do nothing about the pain he turned to drugs and alcohol. He was home on leave from Germany in Jan 69

and did not return. At his trial, he claimed that he was picked up by the Air Police in mid-March 1969 and was given a Government Transportation Request to go to Ft. Dix to rejoin his unit. He said that he again went AWOL. He was convicted of being AWOL for two months.

(No. 173) Applicant escaped from the stockade by fleeing a police detail on 24 Aug 68. At the time of his escape he was serving a sentence adjudged by a special court for previous AWOL. He surrendered to the FBI on 28 Feb 74.

(No. 98) On 13 Jan 71, almost four and one-half years after his 18th birthday, applicant registered with the Selective Service. He was immediately classified 1-A and ordered to report for military induction. On 26 May 71 he requested postponement claiming hardship dependency. After several requests for postponement having been denied, applicant began but failed to complete processing for induction. He surrendered to the FBI on 29 Jan 73. He insisted throughout his trial that he did not wilfully evade induction, that he simply failed to conform with Selective Service procedures. He cited numerous family problems as distractions, to wit: his father's illness, his mother's unemployment, his sister's addiction, and his immediate family.

(No. 80) Applicant never based his draft resistence on religious or ethical grounds. He attributes his failure to report to a combination of procrastination and mistaken belief that the impending demise of the conscription system would immunize him, and a lack of appreciation for his legal obligation. Note that this applicant left his home at 16 and then drifted into the drug subculture and its characteristic life styles and values.

No. 126) After serving approximately one and one-half years of a six-year enlistment, applicant became heavily involved with drugs. He was serving in Okinawa. Having purchased orders which returned him to the Continental United States, applicant assumed the status of UA on 28 May 70. At applicant's trial a sanity board was ordered and did find that at the time of the offense applicant was experiencing an organic brain syndrome secondary to drug affect manifested by paranoid delusions and visual hallucinations which impaired his judgment to such a degree that his ability to adhere to the right was impaired. However, it should be noted that by history, the patient's organic brain syndrome had apparently cleared about one month after his return to CONUS in 1970, at which time he still elected not to turn himself in.

Aggravating Factors: 6.

Prior Refusal to fulfill Alternative Service - This factor indicates that an applicant has been granted Conscientious Objector status and thereafter failed to perform assigned alternative service. However, this factor does not apply to members of Jehovah's Witness, Muslim, or other religious sects who cannot abide by Selective Service orders to perform alternate service (They are perfectly willing to perform court-ordered alternative service, however, a continued refusal to perform alternative service subsequent to a judicial order without further explanation makes this factor apply to those religious sects too). Extenuating circumstances should be noted, but this factor would still be likely to apply.

Aggravating Factors: 7.

Violation of Probation or Parole - This factor indicates whether an applicant violated the provation or parole to which he was sentenced for his qualifying offense to be reported. The violation would have had to be serious enough to have caused the revocation of that probation or parole. Other probation or parole violations are not relevant.

7. Violation of Probation or Parole

(No. 82) On November 9, 1971, applicant reported for induction but departed prematurely, apparently in possession of his records. Applicant states one of the induction officials informed him he would be leaving for an Army base at 5:00 PM that day. Applicant states he panicked and left the induction center. Applicant states if given another chance he would serve. Applicant was sentenced to two years, to serve six months with 18 months probation. Probation was revoked for failure to report and for joy-riding offenses and for escape and applicant was given a two-year adult sentence.

(No. 10) On 22 December 1970 pleaded guilty to the Selective Service violation, and was placed on three years probation on 30 December 1970. This probation was revoked on 25 January 1974 and the applicant was sentenced as indicated above. Applicant's probation was revoked for, among other items, failure to comply with the specific terms of his probation "to make a bona fide effort to enlist, and if that failed, to perform alternate service under supervision for three years."

(No. 528) The applicant served 19 months and 11 days under the Youth Corrections Act and was paroled on 10 Nov 1972. He was recommited on 4 Oct 1974 as a parole violator due to charges of assault and battery, failure to report arrest, failure to report change of address, leaving the district without permission, robbery, theft, burglary and threats.

Aggravating Factors: 8.

Multiple AWOL/UA Offenses - This factor indicates that an applicant went AWOL more than once. Allegations are not sufficient. There must have been an Art. 15 or court-martial determination.

Aggravating Factors: 9.

AWOL/UA of Extended Length - This factor indicates the combined length of qualifying AWOL offenses. It does not apply if an applicant had been AWOL for a total of 30 days or less.

Aggravating Factors: 10.

Failure to Report for Overseas Assignment - This factor is applied where the applicant has been ordered to report for military duty outside the United States (Viet Nam or elsewhere) and goes AWOL before reporting to the overseas assignment.

1. Lack of Sufficient Education or Ability to Understand Obligations or Remedies Available under the Law -

The basic data for this factor are scores reported by IQ tests and military tests that approximate IQ tests. Usually, an IQ score of 80 or below is sufficient to qualify for this factor. (Note: the Navy GCT score is roughly half the equivalent IQ score. The Marine Corps GCT and Army provide a rough IQ equivalent.)

The Armed Forces Qualification Test Score (AFQT) under 30 (Category IV and V) make this factor apply automatically. If there is a conflict of high and low scores, mark the factor.

Ocasionally data other than test scores are used to establish the factor, including reading ability at grade school levels or, for example, a statement of a psychiatrist that an applicant is retarded. At times, the Board has marked this factor despite high educational achievement of satisfactory military proficiency scores.

Mitigating Factors

1. Lack of Sufficient Education or Ability to Understand Obligations or Remedies available under the Law.

No. 202) Applicant left school after completing the 11th grade and attended trade school for carpentry. He has a GT score of 91 and his AFQT score is 21 (Category IV).

(No. 216) (a strong No. 1) He completed the 10th grade and quit school because he lost interest. His GT score measures 68 and his AFQT score is 12 (Category IV).

(No. 214) Applicant has a tenth grade education. His GT score measures 88 and his AFQT is 21 (Category IV).

(No. 220) Applicant withdrew from school in the 11th grade for economic reasons. Applicant scored 79 on the Army's GT test. His AFQT score is 13, classified him as a Category IV.

(No. 83) Applicant has a sixth grade education and a Beta IQ of 49. (This is a strong No. 1)

(No. 583) The applicant completed the 10th grade in public school, but at Morrison Training School he was placed in the eighth grade. His IQ was tested on the Wechsler Intelligence Test for Children at 62. During the present classification his Beta IQ was reported at 84.

(No. 439) This applicant is a high school graduate with three years of college. His GT score is 95, however, his AFQT score is 7, Category V.

(No. 194) Applicant completed a tenth grade education. His GT score initially measured 68 but on a retest it rose to 76. His AFQT score is 10 (Category IV).

(No. 335) Applicant terminated his schooling in the seventh grade at the age of 16 to support the family. His GT and AFQT scores 95 and 20 respectively.

(No. 397) He withdrew from school during the 11th grade. His AFQT score is 18 (Category IV), considered low, and his GT score is 93, considered average.

(No. 306) The applicant has 12 years of schooling but did not graduate from high school. His AFQT score is 42 (Category III).

(No. 395) Applicant withdrew from school after completing the eighth grade. His AFQT score is 38 (Category III), and his GT score is 61, the latter considered below average.

(No. 79) Applicant dropped out of high school at either the ninth or the eleventh grade (record unclear) to help mother with finances. School record indicates recurrent history of class failure and non-attendance. Revised Beta score was 76 and GATB was not administered due to poor reading level. However, it is noted that applicant has a tested "border-line intelligence."

(No. 70) The applicant's mother is approximately 58 years old and reportedly is somewhat primitive, illiterate and slightly retarded. The applicant completed the third grade by 14 and had a Beta score of 69.

(No. 97) Although a high school graduate, his scholastic achievement was considered "very low" and he has a Beta IQ of 78.

(No. 45) The applicant lived in British Honduras until they immigrated to New York City with his mother in 1969. During the two years following he worked in a dental laboratory training program and attended a night high school. In 1970 the applicant attended Brooklyn Community College on a New York City social services grant. There is no information on academic achievements or IQ tests.

Mitigating Factors

2. Personal and Immediate Family Problems -

This factor reflects significant emotional, financial, marital, or other personal difficulties faced by the applicant or his immediate family prior to, or at the time of, or after his qualifying offense. His immediate family includes guardians (e.g., grandparents) and intended spouses (especially if pregnant). This factor is marked only if these problems explain the offense, or contributed to it or its continuation, or if they would impair an applicant's ability to perform alternate service. On at least one occasion the Board considered a subsequent family tragedy in reducing alternate service.

2. Personal and Immediate Family Problems.

(No. 67) He states that the reason he went AWOL was to go home and help his wife.

(No. 220) The family subsisted on public assistance after the disablement of the father. The mother is now a cancer patient and is undergoing two operations. She is receiving cobalt treatments. Applicant's first absence was precipitated by concern for the well-being of his mother who had been stricken by cancer. His concern was heightened by the disablement of his father who was unable to work. Each remaining absence was apparently precipitated by the continuing welfare of his parents.

(No. 710) His father had a bad criminal record and was awaiting trial for murder at last word. Shortly after leaving school, he moved to New York City. During his two years there, he never had a regular job or permanent address. For about 18 months he had an expensive heroin habit but there is no evidence as to how he supported it.

(No. 528) The applicant is the fifth born of nine children in a black family. The family apparently lived on a meager existence because of the large number of children and a low income level. Applicant stated that he was in juvenile training school when he turned 18 and failed to register when he was released. There is no record of applicant being in the training school at age 18 but rather at the age 16.

(No. 474) Applicant states that while at Ft. Gordon he received a letter from his mother stating that his father's eyesight was failing and the family was having financial problems as a result of his father's inability to work. He applied for a hardship discharge, but he was denied. He was transferred back to Ft. Gordon, where he learned by mail that his father's eye condition had worsened. Subsequently, he left the military control and went home where he worked continually for a construction company.

(No. 441) Applicant testified under oath that after receiving his combat arms bonus he went home for a weekend expecting to return to duty on the following Monday. He further testified that he used his bonus for an automobile for his mother. He then lost his ticket and asserts that he stayed to look for it, but was unable to find it. His mother's illness, kidney disease, worsened approximately three months later. Applicant then remained home to take care of her.

(No. 236) (weak No. 2) His mother's health began to fail when the applicant was 16 years of age and consequently the family was receiving welfare assistance. He reportedly went AWOL in order to help his mother pay bills and to get off welfare.

(No. 280) Applicant explains the reason for his AWOL , for which he received a special court-martial, as follows: He was at home helping his pregnant wife find a place to live and was awaiting an allotment which was never activated. Therefore, his wife was forced to move back with her mother. Subsequently, this allotment was never started and the applicant's pay records were lost and he could never be paid. Because of this financial trouble, applicant was forced to seek work and provide for his family. His wife was on welfare and was in poor health due to complication of the birth from their second child; bad heart and possible sickle cell anemia. Applicant explains that he requested an Undesirable Discharge because of his family situation.

(No. 495) (weak No. 2) In a letter to the Discharge Review Board he stated that his problems began when his father's health worsened, resulting in almost total blindness. Unable to obtain leave, he went AWOL since being home meant more than receiving the Article 15 and the Undesirable Discharge. In substantiation of his father's condition, he submitted a letter from the doctor stating that the father was legally blind.

(No. 506) While he was waiting at Ft. Dix, his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems and he requested Red Cross help and emergency leave to deal with the difficulty. His family was put out of their apartment and was forced to live in their automobile and also had no food. He traveled to The Pentagon and talked to a Major in Classification and Assignment and was reportedly told to go home and await the results of a telegram to Europe regarding his pay records. He called back twice but reportedly no one knew of his situation or had heard of him.

(No. 241) In January 71, a few days before he was due to report to the Army Overseas Replacement Station, Ft. Lewis, Washington, applicant's first wife had locked herself in the bathroom and he could hear water running and bottles rattling. She had threatened to commit suicide unless he promised not to report, as she was positive he was going to Vietnam and would be killed. He kicked in the bathroom door and found his wife with a handful of pills and thereupon decided not to return to duty. Applicant subsequently divorced his first wife in July 1971 but did not then return to military control because he had debts he wanted to pay before returning.

(No. 215) Applicant relates that he went AWOL because he was having family problems. His divorce went through, and his Army pay report was in disorder which resulted in his not being paid and not being able to support his family. On top of this, his 62-year-old diabetic mother, who receives no support from her husband, is taking care of his sister's two children, ages 12 and 3 years. Applicant relates that his mother receives welfare but she needed his help financially and around the home. He testified that he had to obtain an Administrative Discharge from the Army before going AWOL but his request was denied.

(No. 189) This applicant, who is an American Indian, was raised by his aunt and uncle in a small community in North Carolina. During his AWOL he worked for his tribe earning $2.00 an hour to support his aunt and uncle, the latter being crippled.

(No. 293) Applicant enlisted in the Marines on 7 Oct 68 for six years. In Jan 1969 he applied for a Hardship Discharge on the grounds that his mother had broken her wrist and was unable to work. The Administrative Discharge Board found his mother had recovered sufficiently so that she could work and the request was denied. Applicant also alleged that his mother was nervous.

(No. 226) Induction at age 25 compounded the marital strains applicant was already experiencing. Applicant completed basic training at Ft. Lewis, Washington, and AIT at Ft. Ord, California. He was transferred to Ft. Hood, Texas, after a short leave period. On leave he discovered that his prolonged absence in military service made reconciliation with his estranged wife impossible.

(No. 475) At his court-martial, applicant, a PFC (E-3) attributed his first AWOL to the fact that he wanted to stay in Vietnam and did not think his wounds were serious enough to prevent him from returning to the country. He stated that he continued to go AWOL because he was a young, foolish and confused person who was fearful of military punishment.

(No. 130) At the trial, applicant attributed his absence to the following: that he could not believe the things he did at boot camp and so he thought he was not ready for the Marine Corps. During his AWOL he got married in Apr 1972 and found a good job. Subsequently, his wife became pregnant and he decided to return to military control and face the punishment. He acknowledged his responsibility to the Marine

Corps and the fact that he did not fulfill it, but also acknowledged his responsibility to his family and did not want to fail there also. Applicant stated that he wanted to give his family the home that he never had.

(No. 451) Prior to departure to a UA status, applicant applied for a hardship discharge but was denied. Applicant's mother was suffering from a serious ailment which was being aggravated by her husband's girl friend who used to come around and harass her. Applicant then asked for leave which was denied. At this juncture applicant departed on his UA on 31 Aug 68. During his entire UA applicant worked in an unknown capacity for Western Electric. With those earnings he supported his mother and brother. Even before entering the Army the applicant had to support his sickly mother and brother. His father sent no support, having deserted them.

(No. 238) At trial, applicant gave two reasons for his AWOL. The first reason related to the conditions at Ft. Hood, Texas. He was assigned as a tanker although he was never trained in that area. Neither were the other members of the company and as a result three people were killed in training, two in the presence of the applicant. Applicant himself was nearly run over by a tank. He stated people had no idea what they were doing and he saw the deaths as a result of stupidity. Coupled with this situation at Ft. Hood, was the fact that applicant's father went bankrupt as a result of his drinking problem. Applicant sent most of his pay home but this situation did not improve. His parents' home was foreclosed on and applicant felt compelled to leave and help his mother and seven younger brothers and sisters. While AWOL he was employed and earned $180 a week and gave his money to his mother.

(No. 192) At his trial, applicant, a Pvt (E-1), testified under oath that at the time he went AWOL his wife was pregnant, unable to work and could not find a job. Because she was unable to financially support herself, applicant felt that he was needed more at home than in the Army. After the children were born, applicant remained at home because his family was in a financially worse position than when he first went AWOL.

(No. 385) His natural parents died in an automobile accident and he was adopted at the age of 5. His adoptive parents died when the applicant was 14 years old. The applicant is unmarried and has an older sister but he does not know where she lives. He dropped out of school

after completing the tenth grade but was encouraged by his principal to join the Army. The applicant reported during his trial that he enlisted at the age of 17 and that was when he became involved with the drug culture. Applicant completed basic training and while in AIT began his first of three periods of AWOL.

(No. 397) At his trial, applicant, a PVT (E-1), described the circumstances leading up to his AWOL. On entering the Army, applicant complained of stomach pains and was subsequently discovered to have a duodenal ulcer. After his reassignment to Ft. Bragg his condition worsened and in Apr 1968 he was hospitalized for ten days because of a bleeding ulcer attack. Applicant wanted to remain on the same diet he was on in the hospital but this was not available at his mess hall. He was advised by the doctor to eat at the post cafeteria which he did not think was right. Applicant then went UA in June 1968. This resulted in a special court-martial and a sentence including extra duty and a suspended confinement. Shortly thereafter, applicant was late for formation and he learned because of this, his suspension of confinement was going to be vacated. He did not feel that this is just so he went AWOL. While AWOL he suffered another bleeding ulcer attack in August 1973 which required hospitalization.

(No. 456) In 1964 applicant was married and three children were born of this union. He was divorced in 1971 and custody of the children was awarded to the mother. She was remarried and her husband desires to adopt the children. Applicant does not oppose the adoption but while confined he indicated a desire to withhold consent until he could ascertain personally that the children would be provided with a good home. According to applicant's sworn testimony in extenuation of mitigation, he forecasted to be discharged on normal discharge state in 1972 but instead was ordered to return from Okinawa to Grissom Air Force Base in Indiana. He was informed by his First Sergeant that he would have to extend his enlistment for seven months to meet the requirement for sufficient retainability of his overseas duty assignment. He did re-enlist for the short term period with the understanding that he would be discharged once he returned to Grissom. He was unable to return timely to the continental United States to effect his discharge. No reason is disclosed for this tardiness, (not according to the applicant) did not know why he could not be discharged at Okinawa.

(No. 222) The applicant was inducted under "Project 100,000". He has stated that he had previously been rejected by the Marines and had failed the Army's mental test, but claimed that his papers had been changed so he would qualify. At his trial, there was psychiatric evidence that, although legally sane, the applicant was mildly retarded. Also, in evidence there was a letter from his wife pointing out the poor health of herself and their four-year-old daughter; a letter from his mother disclosing that, when he was 19, he had been diagnosed as having the mind of a six-year-old. Following his conviction and sentence he was sent to the Disciplinary Barracks where he was again diagnosed as being mildly retarded, manifested by low intelligence.

(No. 121) Applicant's first AWOL began because his father was seriously ill and had his leg amputated. Applicant's brother was in prison. Thus, applicant felt he was needed at home. The most recent AWOL was committed because applicant's father was critically ill. Applicant's wife and family were having serious financial and medical problems. His wife has suffered from a disease of the blood cells, and according to applicant, "almost died two times." His son has three testicles and an operation is needed, and his daughter has been under a doctor's care due to her poor appetite. His wife and children are now on welfare. Applicant himself suffers from a kidney problem which causes his blood to be present in his urine. He is deeply in debt because of his family's medical problems. His father had also been seriously ill ever since his enlistment, and eventually died.

(No. 207) At his trial, he testified that in early 1972, while stationed at Ft. Carson, Colorado, he received orders to report to Ft. Dix, N.J., enroute to Germany. However, he was given only eight days, which was insufficient time to dispose of his home and obtain a visa and citizenship for his wife so she and her daughter could accompany him.

(No. 332) Applicant testified under oath that he was granted emergency leave in the ten months of service in Vietnam upon verification by the Red Cross that his mother had lapsed into psychiatric depression and had threatened suicide. Her psychiatric crisis was precipitated by the physical trauma and sequelae she sustained from an automobile accident in May 1969. The accident left her with an abnormal thyroid condition, causing enlargement of the gland and cardiac impairment rendering her unable to work. These domestic conditions altered applicant's original intention to return to Vietnam despite his drug addiction. Some effort was made to extend applicant's leave or obtain

other assignment. Applicant, with no leave extension or reassignment, passed into an unauthorized absence status. Applicant remained home to provide care and support for the disabled mother.

(No. 245) The applicant had completed basic training and was taking AIT at Ft. Gordon, Georgia, when he learned that his future wife was pregnant with a child and having a miscarriage. He requested a pass and was turned down by his Sergeant and went AWOL for 15 days to see his intended wife. When he returned he was told by the same Sergeant that he was getting a court-martial. He was then ordered to dig a grave. He dug six feet deep by six feet long by three feet wide and then was told to fill it up again. He filled up the grave and went AWOL again.

Mitigating Factors

3. Mental or Physical Condition -

This factor reflects physical diseases and defects, and mental diseases that may have contributed to an applicant's offense or which may affect his ability to perform alternate service. Mental defects are more appropriately noted under mitigating factor No. 1. The condition must be serious enough to have caused some personal hardship or incapacity. However, mental or physical problems related to alcohol or drug abuse have not resulted in the application of this factor. In many military cases in which the factor is found, the physical and mental problems were related to military service and the quality of medical treatment received by the applicant, but that relationship is not necessary to make the factor apply.

3. Mental or Physical Condition

(No. 439) (strong No. 3) Applicant's record does show that he had a history of psychiatric treatment prior to entering the service. On a medical report he stated that he had psychiatric problems in college. He stated that between 1968 and 1970 he got flashbacks and felt like committing suicide. Applicant was experiencing similar problems to those outlined above and felt he was unable to cope with the pressures of military life. He went AWOL on 19 Jul 1970-Jan 1971. Prior to discharge he was given a psychiatric evaluation and found to have character behavior disorders due to deficiency and emotional personalties development. The psychiatrist noted that the applicant had a history of psychiatric care.

(No. 194) While applicant, a PVT E-2, had been on leave he was hospitalized for treatment of infectious hepatitis. In an unsworn statement during extenuation of mitigation, applicant states that after the diagnosis of infectious hepatitis had been made by a civilian doctor, the doctor had told him that "his resistance was low and that he (applicant) would live to be 30 years old." Applicant's shock and fear at this statement coupled with the realization that, if true, he had only a relatively short time to live, precipitated his absence. Defense Exhibits admitted at trial confirm applicant's contraction of viral hepatitis and the fact that he was treated at a veterans' hospital after his visit to the civilian doctor.

(No. 309) During boot camp applicant had been subjected to verbal and physical abuse and therefore absented himself. He recalls being called "chili bean" and "Mexican chili". His ineptness also made him the butt of his boot camp unit. Applicant wept hysterically at the trial when he recalled his experience. Finding training intolerable, applicant sought advice from his mother, who advised him to absent himself. At his trial, applicant introduced an affidavit by a Navy psychologist which states that the applicant is passive, dependent/schizoid and should be granted an Administrative Discharge so as not to cause the applicant "further psychological decompensation into either anxiety, neuroses or possibly a psychosis." A civilian psychiatrist found the applicant to have "passive, dependent personalities severe." Applicant also introduced testimony of three suicidal attempts.

(No. 510) Applicant explains that he was sent to Korea shortly after enlisting and while there he contracted pneumonia and had a cold his entire duty. In Dec 1969 applicant was medically evacuated from Korea to the United States for lung surgery. In Jan 1970 a part of one of his lungs was removed. Because of this applicant tried unsuccessfully for the next seven months to obtain a medical discharge and disability benefits.

(No. 342) (weak No. 3) Applicant, a PVT (E-2), pled not guilty at his court-martial and claims that he did not possess the adequate mental responsibility at the time he went AWOL. Based upon the evidence produced by the Government, the court decided the issue against the applicant. Evidences in the record of trial indicated the applicant was upset and nervous and unhappy with his orders to Vietnam. A letter from a psychiatrist was introduced on behalf of the applicant and it stated that he was suffering from extreme anxiety brought on by his infantry training and his orders to Vietnam. The letter explains that the applicant had an extreme fear of physical mutilization brought on by his having been in two car accidents and the fact that some of his friends were killed in Vietnam.

(No. 446) The applicant took leave in the Detroit area and failed to report to Ft. Lewis, Washington, on time. Sometime around 10 Dec 1970 he sustained a serious back injury in an auto accident in Detroit. It was treated at a civilian hospital and at a VA hospital. He returned to Ft. Lewis on 1 Oct. He attempted to obtain further medical treatment for his back. He became frustrated at the lack of treatment for his injured back and went AWOL again on 13 Oct 1970. He received medical treatment at home and then when he improved, he worked as an apartment manager, and then a parking lot attendant.

(No. 397) Upon entering the Army, applicant complained of stomach pains and it was subsequently discovered that he had a duodenial ulcer. After his reassignment at Ft. Bragg his condition worsened and in Apr 1968 he was hospitalized for ten days because of a bleeding ulcer attack. Applicant wanted to remain on the same diet that he was on in the hospital but this was not available at his post mess hall. He was advised by his doctor to eat in the post cafeteria, which he did not think was right. Applicant then went UA in June 1968. He again suffered another bleeding ulcer attach in Aug 1973, which required hospitalization.

(No. 184) For as long as he could remember, the applicant reported severe migrane headaches at times of tension and stress. The applicant requested medical evaluation for his headaches during basic training and AIT, but did not receive medical evaluation. He was ordered to report to the Overseas Station at Ft. Lewis, Washington, and again requested medical evaluation. He was placed in Holding Company for 45 days and received a number of medical tests. He was never told the results of the tests but was lead to believe that he was to be discharged from the Army because of his headaches.

(No. 208) Prior to completing basic training at Ft. Knox, Kentucky, he was hospitalized for pneumonia. Shortly thereafter he went AWOL for two weeks. About two weeks after his release from confinement he was again hospitalized for pneumonia, but the next day, on 21 Apr 70, went AWOL and remained absent until 12 Jun 70. He stated that he, himself, had suffered from nervousness and fits of depression since coming into the Army, and after returning from the AWOL was not able to take the pressure and again went AWOL on 3 Aug 70. While AWOL he was involved in an automobile accident, severely injuring his arm. It was then discovered that he was suffering from a thyroid condition which caused him to lose 70 pounds. Based on his family and medical problems, the investigating otficer stated that a long period of confinement was unnecessary and recommended trial only by BCD Special. At the pretrial hearing, only the defense presented evidence from the Chief of Mental Hygiene and that, because of the applicant's thyroid condition he may not have been legally sane, and the applicant testified that he had numerous memory lapses. Applicant departed AWOL again. The trial, however, proceeded in his absence and he was found sane, convicted and sentenced to a DD, three years confinement at hard labor and total forfeitures. This was approved by the Convening Authority and he was transferred to the Disciplinary Barracks where the psychiatrist recommended again prolonged confinement on the basis that the applicant's conduct was caused by his hyperthyroid condition. While in confinement his thyroid was treated and brought under control. In an examination conducted in conjunction with his appeal, the psychiatrist concluded that he had the typical thyroid symptoms of depression, irritability, impulsivity, feelings of persecution and low tolerance for stress; these problems were probably precipitated by his induction, illness and confinements, marriage and accident; this was most noticeably shown by his weight loss; and that, although he could distinguish from right and wrong, his illness serious impaired his ability to adhere to the right or to form a specific intent.

(No. 227) Applicant suffers from a physical disability, an apparent birth defect, defined as pseudarthosis of the lumbar spine with fusion at joints L5 and S1. The defect causes applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the Induction Station. This disclosure was ignored. Such a condition is acceptable basis for rejection for induction. Applicant was inducted into the Army on 18 Feb 69. He was sent to Ft. Dix, N.J., for basic training. Despite his failures of physical and other test requirements for stamina, he was deemed as having met all the requirements of BCT and was sent on to AIT as a cook.

(No. 121) Applicant himself suffers from a kidney problem which causes blood to be presented in his urine. He is deeply in debt because of his family's medical problems.

(No. 188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared brotherly relationship, was killed while the latter was awakening applicant to start his guard duty. The platoon had set up an ambush point because they had come upon an enemy complex. "This event was extremely traumatic to applicant and he experienced nightmares." In an attempt to cope with this experience, applicant turned to the use of heroin in which he became addicted. During his absence, he overcame his drug addiction only to become an alcoholic.

(No. 245) An extensive psychiatric report for the court-martial reported a mixed neurotic picture manifested by increasing anxiety and military facilities, avoidance of such facilities, feelings of depression, feelings of low self-esteem, feelings of helplessness and hopelessness. The report also stated that there was a history of passive dependence and immature adaptation to life.

(No. 117) While at the Disciplinary Barracks, applicant participated actively in AAA.

(No. 162) Applicant stated that he went AWOL because he had injured his arm in a parachute jump, and since the Army doctors could not do anything about the pain he turned to drugs and alcohol.

(No. 74) Applicant states that he started drinking when he was eleven years old, feels that he has had a serious drinking problem for the past few days, has attempted to secure assistance, but was not able to follow through. Most of his juvenile and adult offenses appear to be related to excessive drinking. According to a psychological evaluation he is a borderline psychotic and in need of professional treatment for both his alcoholism and emotional difficulties. Applicant's stepfather testified at trial that applicant was afraid of going into the Army because he had a fear of being "closed in" which resulted from his prior confinements.

(No. 45) Following his conviction for refusal to report and during his appeal, applicant was hospitalized with a mental disorder, later described as transient situational disturbance.

(No. 5) His physical and mental health appear normal. He suffers, however, from a speech impediment -- stuttering. While incarcerated the applicant was placed in minimum custody in a program for treatment of a drug problem.

Mitigating Factors

4. Employment and Other Activities of Service to the Public -

This factor includes employment prior to, during, or subsequent to the qualify offense. The employment can be, but need not be, comparable to alternate service under this program -- for example, hospital work, police work, assistance to the underprivileged, or church missionary work. The period of service must be at least a few months. A summer job would be enough to qualify for this factor. The question of whether payment disqualified the factor is hard to answer, and the factor should be flagged when in doubt. The period in which this work is performed under conscientious objector or judicial order is applied for the baseline.

4. Employment and Other Activities of Service to the Public

(No. 474) Applicant was born and raised in Indianapolis and has no criminal convictions. There is evidence that applicant was interested in law enforcement and that he assisted the Indianapolis police on numerous occasions. For this work he received a certificate of appreciation.

(No. 523) His previous employment includes work as a shelver at a public library, seasonal laborer and clerical helper. Applicant was also a volunteer worker for a Quaker church group. He is presently attending college, taking pre-med courses, and he hopes to attend medical school.

(No. 583) Applicant has spent the bulk of his time, while in and since leaving school,teaching handicapped and impoverished children. From the pre-sentence report and from the statements of professional people in the education field, it appears that applicant applied himself with total commitment to his teaching responsibilities. He was committed to the point of personal sacrifice. Upon release on parole, applicant plans to complete his college education and return to teaching and helping the youth of the country.

(No. 142) As a civilian, applicant has done a great deal of undercover work for the local police and sheriff's department in his home town.

(No. 410) There was abundant evidence introduced at applicant's court-martial in extenuation and mitigation summarized as follows: that applicant has made an intense effort to improve himself and has the potential to be an excellent citizen; that applicant was active in opposing drug abuse after his jail term; that he was an outstanding prisoner and that applicant possesses a sincere desire to correct his past mistakes and make a better life for himself.

(No. 171) While applicant was UA he worked as a musician and in Feb 1974 he worked for a voluntary organization associated with the Cincinnati Human Relations Committee. He was appointed music director for a number of free concerts and shows which were designed to attract underprivileged, inter-city youths and to serve as a preventive measure against juvenile crime and drug abuse. He also contributed his talents to projects of the Cincinnati Center for Youth and the Cincinnati Musicians Association (Record of Trial, 24). Applicant requested that the court award him a bad conduct discharge from the service so that he could continue to work with needy children (Record of Trial, 26).

(No. 102) He has had several furloughs, all of which to attend circuit assembly meetings of the Jehovah's Witness, and all have been successful. This applicant is eligible for parole on 1 November 1974;upon release he intends to return to his parental home in Sulphur, Oklahoma, become a Jehovah's Witness minister, and seek employment.

(No. 14) From Sep 1970 to Sep 1971 he worked as a dietary supervisor at the Buxnham City Hospital. The applicant claims he opposed the Vietnam War on an ideological basis, and that he sincerely believes he is a conscientious objector. He claims his work in the hospital was to support his beliefs.

(No. 51) He worked for the Southern Christian Leadership Conference between 1969 and 1973. However, the report on convicted prisoners by the U. S. Attorney states that "he was assigned to three hospitals and worked in two hospitals for approximately eleven months, but he was terminated at each because of his mistreatment of patients and co-workers." He failed to report to the third hospital where he was assigned (Classification Summary).

Mitigating Factors

5. Service-connected Disability -

This factor has not been applied very often and there are not many examples. It indicates some permanent physical or mental injury resulting from military duty. As with factor No. 2, drug or alcohol-related disabilities do not apply. The disability need not rise to the level of, nor need it have been recognized by, the Veterans Administration to qualify.

Mitigating Factors

6. Extended Period of Creditable Military Service -

This factor is marked with the time in service, not a simple "Yes" or "No". Creditable service does not include time spent AWOL or in military confinement. With these exceptions, the factor bears no relationship to the quality of an applicant's military service -- just the length of that service.

Mitigating Factors

7. Tours of Service in the War Zone -

This factor is applicable in cases where the applicant has completed a full tour in Vietnam, where he has served aboard a Navy ship that had a sea patrol off the coast of Vietnam, or where he was unable to complete his tour for reasons other than his offense. In some cases it has been applied where the applicant had not completed a tour, but while on authorized leave from Vietnam assumed an unauthorized absence status.

Mitigating Factors

8. Substantial Evidence of Personal or Procedural Unfairness -

This factor embodies a reasonable determination of whether an applicant was treated fairly in any application for conscientious objector status, claim for Selective Service exemption or deferment, or any remedy available under military law (including claims for hardship discharge, compassionate reassignment or emergency leave) on procedural, technical or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary. For example, this factor is present when the military fails to consider compelling personal problems or health difficulties, causing the individual to go AWOL. Care should be taken in evaluating such situations since the services are not expected to cater to every complaint, and the legitimate demands of military discipline may outweigh an applicant's personal needs. In case of doubt, the factor should be flagged.

Two Selective Service situations are particularly important: First, prior to June 1970 it was not a valid CO claim if the person alleged personal moral or ethical values against war or killings. The Welch case reversed this rule. Persons denied CO on this claim prior to Welch qualify for this factor, even if no actual procedural unfairness occurred.

Watch for two other service situations -- when an individual is told to wait at home for further orders, which never come; and when a superior advises an AWOL in order to get a discharge. Corroborating facts should be explicitly noted in the summary.

Care should be taken in reviewing the sequence of events before a Selective Service Board, since we have seen many examples of procedural errors which may have affected the substantive rights of the applicant.

8. Substantial Evidence of Personal or Procedural Unfairness

(No. 433) The applicant volunteered from Germany to go to Vietnam. He went home on leave in May 1970 en route to Vietnam and contracted a rash and fever. He went to Fort MacArthur for medical treatment and was ordered to stay at home until he had recovered. He was told to expect orders following his recovery. No new orders were received and by July 1970 he contacted his Congressman, who was a friend of his parents, to find out what had happened. He received a reply that the Army had nothing on his shipment. He contacted the Army Inspector General at Fort MacArthur following that but never heard from the Army about his orders. There is some evidence he thought he would have been eligible for a medical discharge related to curvature of the spine. The applicant also spent approximately two months in the hospital in Germany following his request for reassignment to Vietnam but before his actual transfer. During his absence, the applicant worked a number of part-time jobs. He was apprehended in Dec 1973 when he stopped for a traffic violation and he showed the police military ID. At the trial he stated that he thought the Army had just forgotten about him.

(No. 215) Applicant relates that he went AWOL because he was having family problems; his divorce went through; and his Army pay record was in disorder which resulted in not being paid and not being able to support his family. On top of this, his 62-year-old diabetic mother, who receives no support from her husband (whereabouts unknown), is taking care of his sister's two children, ages 12 and 3. Applicant relates that his mother receives welfare but that she needed his help financially and around the home. He testified he attempted to obtain an administrative discharge from the Army before going AWOL but his request was denied.

(No. 454) He applied for a hardship discharge in January 1967 because his wife was a deaf mute and had given birth to their second child while he was in basic training.

(No. 451) Prior to departing in a UA status applicant applied for a hardship discharge but it was denied (RT 15). Applicant's mother was suffering from a nervous ailment which was being aggravated by her husband's girlfriend who used to come around and harass her (RT 16). Applicant then asked for leave which was denied (RT 16). At this juncture applicant departed on his UA on 30 August 1968.

(No. 230) On 2 January 1968 the applicant again absented himself and remained in this status until 30 January 1968. He was prosecuted before a special court-martial at Fort Dix, N.J. on 16 February 1968 and was sentenced to confinement for three months and partial forfeitures. Applicant never received any further training during his assignment to Fort Dix. On 17 April 1968, three days after release from confinement, he was ordered to report to the Army Overseas Replacement Station, Oakland, California, for further assignment as an infantryman (11B20P) to the 90th Replacement Battalion, APO San Francisco 96491 (Vietnam). Applicant contended that his orders were erroneous and sought to have them changed. He demanded orders for advanced training with a school brigade (Record of Trial, 17-19). He was unsuccessful. Thereupon, he absented himself. At trial on the major absence, applicant's military attorney invoked Section 454(a), Title 50, Appendix, U. S. Code, as a defense. This section, inter alia, provides in pertinent part that:

> Every person inducted into the Armed Forces . . . shall, following his induction be given full and adequate military training for service in the armed forces, into which he is inducted for a period of not less than four months, and no person shall, during this four-month period, be assigned for duty at any installation located on land outside the United States, its territories and possessions (including the Canal Zone) . . .

The military judge ruled that the cited statutory provision would not justify a self-help remedy, namely: unauthorized absence.

(No. 172) At his trial, applicant, a private first-class (E-1), attributed his absence to financial and family problems. He was told that he was not receiving any pay because he had been overpaid by $1500 which was allegedly sent to his wife by allotment. Applicant testified that neither he nor his wife received this money and that one of his children was also in the hospital at this time with bronchial asthma (Record of Trial, 16).

(No. 322) The Record of Trial indicates that applicant went AWOL 27 days before he was scheduled to be released from active duty. At his trial, applicant attributed his AWOL to the fact that he thought it was proper for him to go home and await his release from the service. No one had ever explained to him how much time lost he had accumulated and he learned through a friend that his unit's First Sergeant had stated that applicant was signed off the post and was not to return. Applicant admitted that he had never personally checked whether it was proper for him to leave the post on 21 Nov 1968 (Record of Trial, 11-17).

(No. 397) At his trial, applicant, a private (E-1), described the circumstances leading to and causing his AWOL. Upon entering the Army, applicant complained of stomach pains and it was subsequently discovered that he had a duodenal ulcer. At his reassignment to Fort Bragg, North Carolina, his condition worsened and in April 1968 he was hospitalized for ten days because of a bleeding ulcer attack. Applicant wanted to remain on the same diet that he was on in the hospital but this was not available at his post mess hall. He was advised by a doctor to eat in the Post cafeteria which he did not think was right. Applicant then went UA in June 1968. This resulted in a special court-martial and a sentence including extra duties and suspended confinement. Shortly thereafter, applicant was late for a formation and he learned that because of this his suspension of confinement was going to be vacated. He did not feel this was just so he went AWOL (Record of Trial, unsworn statement, 14-18). Applicant stated at his court-martial that he stayed in New York the entire AWOL and was steadily employed. He suffered another bleeding ulcer attack in August 1973, which required hospitalization.

(No. 184) For as long as he could remember, the applicant reported severe migrane-type headaches at times of tension and stress (Medical Report in Record of Trial). The applicant requested medical evaluation for his headaches during basic training and AIT but did not receive medical evaluation. He was ordered to and reported to the Overseas Replacement Station at Ft. Lewis, Washington, and again requested medical evaluation. He was placed in a holding company for 45 days and received a number of medical tests. He was never told of the results of the test but was led to believe he was to be discharged from the Army because of the headaches (unsworn statement in Record of Trial). Finally, frustrated due to apparent inaction of his problem, he went AWOL. Following the AWOL he sought civilian medical treatment but was unable to continue it due to financial problems. A medical report introduced at the court-martial recommended two possible remedies for the applicant before his AWOL. He should have either a change of duty assignment to a non-combat unit to relieve the stress causing the applicant's headaches or he should have an administrative discharge on grounds of unsuitability. The applicant surrendered himself to the military at Ft. Dix, New Jersey, on 7 May 1974.

(No. 383) He fainted on duty as gate guard (Record of Trial and Hospital Records); was examined at the base emergency hospital, and was referred to a psychiatrist. He had a history of fainting, chest pains, nausea and vomiting that he reported to the psychiatrist (Record of Trial). Shortly after his absence he attempted suicide, using a hose connected to the exhaust pipe of his van.

(No. 417) Applicant testified at his court-martial that before being inducted he had requested a delay due to his mother's poor mental health and financial condition (Record of Trial, 47). He did receive two induction postponements from the Selective Service but was subsequently inducted on 10 March 1969 (Record of Trial, Defense Exhibits M and O). After arriving at Camp Pendleton, California, in the summer of 1969, applicant applied for a hardship discharge but it was turned down because of insufficient documentation (Record of Trial, 60,and Defense Exhibit U). Shortly thereafter, applicant's mother was hospitalized because of a car accident and he went home on emergency leave. While at home applicant attempted to gain further documentation for his hardship discharge. At the end of his leave, applicant did not return to his base because his mother was bedridden and there was no one to take care of and provide for his younger brothers and sisters (Record of Trial, 62).

(No. 179) While stationed at Ft. Bragg, North Carolina, applicant received orders for duty in Germany. Not desiring to go overseas, he re-enlisted for six years on 13 Dec 1963 with the understanding that he would be guaranteed 18 months duty at Ft. Dix, New Jersey (Record of Trial, 15). Approximately seven months later, applicant again received orders to Germany. At this time he was married and had a baby daughter. He tried to get out of the orders but was unsuccessful. Applicant was given 30 days leave and used this time to find a temporary home for his family, who up to this time had been living with applicant's mother (Record of Trial, 16). This home, consisting of one room, was located in the ghetto. Not wanting to leave his family in such an environment, the applicant went AWOL to earn more money (Record of Trial, 16-17).

(No. 165) During sworn testimony in extenuation and mitigation, applicant, a Private (E-1), stated that he received a letter from his grandmother in which she indicated her need for further financial support and the fact that her home was in a state of disrepair, bordering upon inhabitability (Record of Trial, 44-45). According to applicant, his take home pay was insufficient to sustain both himself and his grandmother. He went to his commanding officer for help but was told that he had no problem and that all he wanted was to get out of the service (Record of Trial, 47). As a result, applicant assumed a status of unauthorized absence. During his absence he purchased and fully paid for a home trailer for his grandmother (Record of Trial, 45).

(No. 456) According to applicant's sworn testimony in extenuation and mitation, he forecasted to be discharged on his normal discharge date in 1972 but instead was ordered to return from Okinawa to Grissom Air Force Base, Indiana (Record of Trial, 35-36). He was informed by his First Sergeant that he would have to extend his enlistment for seven months to meet the requirement for sufficient retainability for his overseas duty assignment. He did re-enlist for this short-term period with the understanding that he would be discharged once he returned to Grissom Air Base (Record of Trial, 36). He was unable to return timely to the continental United States to effect this discharge. No reason is disclosed for the tardiness, nor according to applicant did he know why he could not be discharged in Okinawa. His absence was terminated by apprehension and he was tried and convicted by general court-martial on 28 May 1974.

(No. 198) At his trial, the applicant, a Private (E-2), testified that he had been addicted to heroin since he was 19. Although he was able to get through Basic, he began using it again while on a 3-day pass during AIT. This resulted in his special court-martial and was the cause of his subsequent periods of AWOL. During his last AWOL, he signed himself into a drug rehabilitation center. According to a letter from the center, he was a resident from 4 Feb 71 until 4 Oct 71, and was under aftercare supervision until 3 Feb 74. It further stated that when he was released his condition was stable and he had progressed significantly. The applicant stated that he then called Fort Dix to arrange his return but was told that they did not have his records. A few weeks later the FBI called and stated that they had his records and would be out to pick him up. Following his conviction, he was sentenced to a Bad Conduct Discharge and four months confinement at hard labor. Subsequent to his release under the clemency program, the sentence was approved by the Convening Authority, but the remaining confinement was suspended.

(No. 305) Applicant served stateside until 21 January 1969 when he reported for duty as a rifleman in Vietnam. He served in combat for an entire year with the America Division. Applicant departed AWOL because he was not taken out of combat within the customary seven days prior to outprocessing. Applicant felt that his Company Commander was making an exception witn him and that it was not justified (Record of Trial, 17-18). He left Vietnam on his own a few days before his tour of duty was up.

(No. 222) The applicant was inducted under Project 100,000. He had stated that he had previously been rejected by the Marines, and had failed the Army's mental test, but claimed that his papers had been changed so that he would qualify. At his trial, he testified that he had tried to complete basic training but went AWOL when the pressures became too great. He went home to his wife who was pregnant and suffering from asthma. After being returned to military control and convicted by special court-martial, he was assigned to Ft. Polk, Louisiana, but instead went back home to his wife. After the birth of their child, he worked at odd jobs both in Mississippi and Texas until 11 Sept 70 when he was incarcerated by civilian authorities for petty larceny. He was turned over to military authorities on 30 Sept but went AWOL the following day and remained absent until he was apprehended on 31 Jan 74. During this time he served 9 months of a one-year sentence in a Mississippi prison for grand theft and from Aug 73 until Jan 74 worked as a truck driver for a masonry supply company. Although the investigating officer recommended trial only by a Special Court-Martial empowered to adjudge a Bad Conduct Discharge, the charged were referred to a General Court-Martial. At the trial, there was psychiatric evidence that, although legally sane, the applicant was mildly retarded. Also in evidence was a letter from his wife pointing out the poor health of herself and their 4-year-old daughter; a letter from his mother disclosing that when he was 19 he had been diagnosed as having the mind of a 6-year-old; and a letter from his employer attesting to his excellent job performance and stating a desire for his return. Following his conviction and sentence, he was sent to the Disciplinary Barracks where he was again diagnosed as being mildly retarded, manifested by a low intelligence. He made excellent progress and was evaluated as being slow, but having a positive attitude. The psychiatrist recommended upgrading to a non-punitive discharge on the basis that the Army was as much at fault as the applicant.

(No. 356) In a letter, dated 10 Nov 74, to the PCB, applicant relates that he absented himself to avoid harassment by his immediate commander. The alleged harassment evolved from a conviction. As the result of an absence from 16 June to 3 August 1972, applicant was convicted by a summary court-martial and sentenced to confinement. On release from the brig and his return to his former unit, applicant found that he was constantly harassed, ridiculed and assigned to demeaning work. Applicant found the harassment intolerable. He relates that he did not return to military control because he feared being returned to the command that harassed him.

(No. 229) Applicant was enthusiastic about his induction into the Army, believing that he would have financial security and would receive technical training. He was assigned to Ft. Dix, N.J., for basic training. His lack of physical agility and difficulties in reading and writing impeded his progress. Consequently, he was recycled for his failure to achieve passing training test scores. Entered basic training (normally, a six-week stint) on 2 Sept 1964 and did not graduate until 7 June 1965. After a short leave, applicant was sent to Ft. Knox, Kentucky, for advanced individual training as a tank driver. He continued to have learning problems in advanced training. This problem was compounded by the ridicule of his peer who discovered that he required several months to complete basic training. Applicant attributes his absences to frustration and discouragement caused by his inability to learn and to earn the respect of his associates (Trial Transcript, pp. 17-19).

(No. 207) At his trial, he testified that in early 1972, while stationed at Ft. Carson, Colorado, he received orders to report to Ft. Dix, N.J., enroute for Germany. However, he was given only eight days, which was insufficient time to dispose of his home and obtain a visa and citizenship for his wife so she and their daughter could accompany him. He was therefore late and received an Article 15 on 14 Apr 72 for being AWOL from 4 Feb to 11 Apr. He was granted a delay enroute to return to Ft. Carson to apply for a compassionate reassignment, but his home had been repossessed. At the end of August he was told that he could not be paid so he left to look for his wife and daughter who had returned to Mexico. He was unsuccessful and returned to Denver where he was apprehended on 29 Jun 74.

(No. 221) Applicant absented himself one month prior to the termination date of his enlistment contract (Trial Transcript, 30). His absence was precipitated by the illness of his father and the unresponsiveness of the military authorities to applicant's pleading for approval of leave and for information on the date of the termination of his enlistment. During this time, applicant's parents were in dire financial condition (Trial Transcript, 29-30). Frustrated by these conditions, applicant absented himself to provide support for his parents. After an absence of 30 days, applicant became concerned, telephoned his commander, informed him of his whereabouts, and sought to obtain a commitment on the disposition of his offense. The commander declined to make any commitment or prediction on the disposition of the offense (Trial Transcript, 33-34).

(No. 227) Applicant suffers from a physical disability, an apparent birth defect, defined as Pseudarthrosis of the lumbar spine with fusion at joints L-5 and S-1. The defect causes the applicant to have severe lower back pains, preventing him from engaging in any vigorous activity. Applicant mentioned his back problem when he was being examined at the induction station. His disclosure was ignored (Trial Transcript, 22). Such a condition is an accepted basis for rejection for induction (Para. 36(c), Chap. 2, AR 40-501; letter from Dr. Darnell to Capt. Stein, DC, dated 19 Aug 1974, allied papers (Trial Transcript).

(No. 223) Applicant was ordered to Vietnam in March 1967 to be assigned to an artillery group at the completion of leave. Applicant absented himself after leave and remained absent until Aug 1967 when he returned to military control at Ft. Meade, Maryland. From Ft. Meade he was transported under guard to Oakland, California, for air transportation to Vietnam. On 6 Sept 1967 applicant missed a scheduled flight to Vietnam. On 8 Sept 1967 his major absence began (Trial Transcript, 29-30). Applicant was disillusioned with the Army because he enlisted in the Army for Korea but instead was to be assigned to Vietnam. He also was led to believe by a recruiter that he was to receive training in electronics. This never happened (Trial Transcript, 31-32). Thoroughly alienated by what he regarded as breaches of contract, applicant then reacted by absenting himself.

(No. 123) One of the periods of AWOL for which he was charged was occasioned by an attempt to attend his grandmother's funeral (Record of Trial).

(No. 495) In a letter to the Discharge Review Board he stated that his problems began when his father's health worsened, resulting in almost total blindness. Unable to obtain leave, he went AWOL since being home meant more than receiving the Article 15's and the Undesirable Discharge. In substantiation of his father's condition, he submitted a letter from a doctor stating that the father was legally blind.

(No. 506) The applicant served in Vietnam in 1967 as a Sergeant in the Infantry although he was trained as an M.P. He reported he had been wounded and returned to duty. He then was involved in serious combat just before he was scheduled to go on a rest and relaxation trip to Hawaii. He was delayed in returning to his base because of the combat, and when he traveled to Hawaii he found his wife was sick. He absented himself on 8 May 1967 and traveled home in order to help.

He reported that he was just out of hard combat and not responsible for his actions (letter of applicant). He returned to Ft. Belvoir (Virginia) on 6 Sept 1967 and received a Special Court-Martial. The sentence adjudged and approved included a reduction to Corporal E-4. He reported he was then ordered to Europe and he reported to Ft. Dix (New Jersey) for further travel to Europe. While he was waiting at Ft. Dix his records were shipped to Europe and he was not paid for 45 days. He reported his family was having financial problems and he requested Red Cross help and emergency leave to deal with the difficulty. His family was putout of their apartment, was forced to live in their automobile, and had no food. He traveled to The Pentagon and talked to a Major in Classification and Assignments, and was reportedly told to go home to await the results of a telegram to Europe regarding his pay records (applicant's letter). He called back twice, but reportedly no one knew of his situation nor had heard of him. He reported he was committed to his course of action so he continued to stay at home. He found a job but was still forced to take bankruptcy. He was absent until 14 July 1974 when he was apprehended and returned to military authorities at Ft. Meade (Maryland). He received an Undesirable Discharge on 20 Sept 1974.

(No. 191) Applicant, a Private (E-2), was convicted by General Court-Martial on 28 Aug 1974 for being AWOL from the U. S. Army Overseas Replacement Station, Oakland, California, from 27 Mar 1969 until 30 May 1974. He commenced his absence from a leave status and cited his father's failing health and his mother's poor economic prospects as his reasons for being AWOL. He had applied twice for hardship discharges prior to his offense. While AWOL his father died of a stroke on 28 Aug 1972, leaving his mother with a pension of $22 a month. She was a polio victim and was unable to work.

(No. 008) MITIGATING CIRCUMSTANCES: Applicant's claim to C.O. status was apparently denied because it was not made prior to notice of induction. He states that he has sought alternative service but the courts would not allow it.

Mitigating Factors

9. Denial of Conscientious Objector Status on Procedural, Technical or Improper Grounds -

This factor is used when a draft board has denied a CO application for reasons other than an apparently insincere or frivolous claim. This factor has particular application where the draft board applied the pre-Welch standard -- either before or after Welch -- that a CO belief based on a moral, ethical or philosophical belief was not an appropriate basis for exemption. The Board does look for some evidence that a CO application was a sincere one. It should be noted, therefore, whenever the record indicates, a CO situation may be present.

A "late blooming" realization of CO may be legitimate even when provoked only by a draft board notice. Naturally, the Board will look closely at the evidence in these cases. Presuming sincerity, look carefully at the reason why the claim was denied.

9. Denial of Conscientious Objector Status on Procedural, Technical or Improper Grounds

(No. 68) After unsuccessful attempt to achieve a draft exempt status, applicant left his home state of Florida in August 1970 as a fugitive when finally ordered to report for induction. He has since admitted it was a mistake and expressed contrition. He had attempted to achieve C.O. status at one point. His parents claim he was always of a non-violent nature. On 15 April 1974 he was arrested in Denver, Colorado, terminating a period of odd jobs and frequent movement while a fugitive.

(No. 14) On 17 Jan 1970 he applied for C.O. status after his student deferment had expired. This was denied and, in May 1971, he refused induction. His conviction by bench trial was appealed but on 9 Mar 1974 the judgment was affirmed. He was sentenced on 4 Jan 1974 to 18 months and served 9 months, 14 days prior to being furloughed. At the time he was in minimum custody.

MITIGATING CIRCUMSTANCES:

The applicant claims he opposed the Vietnam War on an ideological basis, and that he sincerely believes he is a conscientious objector. He claims his work in the hospital was to support his beliefs, and that his prime error as outlined in the appeal decision was his failure to comply with time requirements for status changes under the Selective Service Act. He also states that he was willing to do alternate service for his country. According to a classification study prepared by the Bureau of Prisons, his ideological reasoning appears to be sincere.

(No. 016) He claims conscientious objection to participation in the Armed Forces and to all wars. He does not contest the verdict of guilt. He feels that his mistake was in failing to follow the legal procedure. Applicant reads the Bible regularly and bases his conscientious objection to some extent on religious belief. His wife is currently the assistant manager of a clothing store.

CIRCUMSTANCES OF OFFENSE:

After receiving an induction order applicant submitted a letter to the Selective Service indicating he was opposed to the Vietnam War and all fighting. He formally submitted a conscientious objector form on 4 November 1968. Selective Service denied the application and he was ordered to report for induction. He failed to report and was ultimately arrested in Atlanta, Georgia.

(No. 53) Prior to the expiration of his student classification he applied for conscientious objector status. The Board denied this request as it did not feel his beliefs were deeply and sincerely held and the Board noted that he did not claim C.O. status until he no longer qualified for any form of deferment. The applicant appealed the decision of the local board and the local board's decision was upheld. He was ordered to report for induction on 19 March 1971, and he reported as ordered but he refused to submit to induction (Presentence Report).

(No. 97) The applicant has been held under minimum custody, is a Jehovah's Witness, and full term less 180 days is 19 Sept 1976. Concerning his religious belief, he claims that he was ordained a minister about 1968; but, according to the presentence report of 14 Sep 73, he has attended church on a very irregular basis for the past two years and is not concerned over his religion as much now as he has been in the past.

Mitigating Factors

10. Evidence that an Applicant Acted for Conscientious, not Manipulative of Selfish Reasons -

Where it can be shown from the statements and actions of the applicant that he did not report for induction or alternate service or that he went AWOL out of sincere, ethical or religious belief. For example, Jehovah's Witness or Black Muslim beliefs which compel an individual not to perform military service qualify an applicant for this mitigating factor -- as would any evidence of deeply held opposition to the Vietnam War.

The factor can also be found when an applicant's offense occurred as a matter of conscience, even if there is no evidence that he opposed the war. For example, one applicant went AWOL after suffering a traumatic reaction to the death of his platoon leader, who was shot while standing next to him.

10. Evidence that an Applicant Acted for Conscientious, not Manipulative or Selfish Reasons

(No. 25) Applicant surrendered to the FBI on 23 July 1973 and attempted to enlist in the U. S. Armed Forces while he was on bond awaiting sentence. A U. S. Probation Officer reports he still wants to enlist in U. S. Armed Forces "and become worth of U. S. citizenship."
MITIGATING CIRCUMSTANCES: Applicant has served six months and six days in prison. Statement of Applicant: " . . . I regret that I have been a burden on the U. S. Government as a result of bad judgment and impulsive behavior. I now realize my serious mistake and pray that amnexty be granted in my case. I am willing to accept any condition imposed upon me by the Clemency Board. My sincere desire is to join the U. S. Armed Forces, prove my loyalty to the U. S. and become a citizen of the United States."

(No. 30) Applicant grounded his resistance to induction on his religious beliefs as a registered Muslim under the name of Bernard B. X. He stated that conscientious objector status was unacceptable to him and that he would accept imprisonment. He did indicate a willingness to perform alternate service of national importance after conferring with his religious advisor (Presentence Report, 20 Aug 73). According to the Presentence Report, applicant is a member of a Muslim congregation in Detroit.
Applicant's religious convictions and the advice received from his religious advisor during the selection process had a determining effect on his understanding of his legal obligations under the Selective Service Act. His willingness to endure incarceration, a form of martyrdom to him, may well have been the direct result of the influence of his advisor during the selection process (see p. 2, Presentence Report, supra). Applicant is dedicated to the tenets of his faith (see p. 2, Current Finding, Classification Summary, U. S. Penitentiary, Marion, Illinois, 14 Dec 73). This extract is revealing for in it applicant first claims conscientious objector status (see p. 1, Offender's Explanation, Classification Summary, supra). Sole cause of his refusal of induction was his religious faith.

(No. 57) Applicant simply quietly refused to step forward and submit to induction ceremony. He persisted in his refusal after counseling, attributing his behavior to his Muslim faith.

(No. 188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared a brotherly relationship, was killed while the latter was awakening applicant to start his guard duty (Record of Trial, 61). The platoon had set up an ambush point because they had come upon an enemy complex. Id. "This event was extremely traumatic to . . . (applicant) and he experienced nightmares." (Admission Summary). In an attempt to cope with this experience, applicant turned to the use of heroin to which he became addicted (Record of Trial, 61-62). Upon returning to the continental U. S. (CONUS) on or about 12 April 1972, applicant initially reported as ordered to Ft. Carson, Coloardo. "He did not discuss this (heroin) problem with anyone because he was afraid he was going to be busted - or busted out oi the Army . . ."

(No. 72) He pled not guilty and made no conscientious objection to service on original registration. He initially had a II-S classification which was changed to I-A when his grades fell. He then requested C.O. status which was denied. Defendant states that he is a Pacifist and objects to killing and to war.

(No. 91) As a Jehovah's Witness he applied for and received C.O. status from his local draft board, which subsequently ordered him to perform civilian work contributing to the maintenance of national health, safety and interest (10 Nov 70). He failed to report for such duty (23 Nov 70). Applicant contended that he was a minister of the Jehovah's Witness faith, and that to accept alternative service would be to compromise his religious belief.
A classification study performed while applicant was imprisoned summed up his character thusly:

> (Applicant) is of above-average intelligence and ability and is confident in his manner. He took a stand based on his religious beliefs and is willing to face the consequences of his decision. His dedication is an asset that will benefit him greatly while he is serving his time and after his release.

(No. 94) Prior to coming to court, applicant attempted to join the New Jersey National Guard to express his desire to rectify the situation and perform acceptable alternate service.

(No. 98) He insisted throughout that he did not willfully evade induction; that he simply failed to conform with all Selective Service procedures. He cited family problems as distractions, to wit: his father's illness, his mother's unemployment, his sister's drug addiction, and his immediate family.

Mitigating Factors

11. Voluntary Submission to Authorities -

This factor indicates that the applicant voluntarily turned himself in when he returned from his last qualifying offense. Whether his prior qualifying offenses ended in surrender is irrelevant. If he is apprehended every time but the last time, the factor is present. If he surrenders every time but the last time, it is not present. For civilians, the factor indicates that an applicant voluntarily surrendered to authorities before his trial, even if he had been a fugitive before his surrender. It applies even if he submits pursuant to a warrant or a subpoena.

Mitigating Factors

12. Behavior Which Reflects Mental Stress Caused by Combat -

This factor is present when an applicant's offense resulted from any emotional or psychological after-effects of being in a combat zone. Some evidence is necessary to document this, such as a traumatic incident on a drastic downgrade in a behavior pattern after leaving the war zone. Combat-induced drug use would qualify an applicant for this factor, if it led to his AWOL.

Mitigating Factors

13. Volunteering for Combat or Extension of Service while in Combat - This factor is present if an applicant volunteers for a first or subsequent Vietnam tour, volunteers for a combat assignment while in Vietnam, or volunteers for re-enlistment or an extended Vietnam tour.

Mitigating Factors

14. Above Average Military Conduct and Proficiency or Unit Citations -

This factor indicates the conduct and proficiency (efficiency) ratings received by an applicant while in the service before or after his qualifying offenses. The time of rating periods considered for the factor are exclusive of the AWOL/UA periods.

The Marine Corps reports conduct and proficiency on a numerical scale from 0 to 5. Average scores above 4.0 (conduct) and 4.0 (proficiency) are sufficient for this factor to exist.

The Navy reports personnel ratings of five different military traits on a numerical scale of 0 to 4. Average scores above 3.0 (conduct) and 2.7 (proficiency) are sufficient.

The Army reports personnel ratings of conduct and efficiency on a one word qualification basis. Any excellent conduct and efficiency rating is sufficient.

This factor can also be found if there is any indication in the record that an individual was member of a unit that received a meritorious citation. Disregard bad ratings given during absences.

Mitigating Factors

15. Personal Decorations for Valor -

This factor reports receipt of the Army commendation medal, Bronze Star, or other medal that is awarded for bravery or achievement in combat. Some awards require a special device for this factor to exist - such as a "V" for distinguishing valor in combat from other reasons for the award. An award without a "valor" citation applies under M-14. Check the Awards memo. Unit citations and Purple Heart awards do not apply here.

Mitigating Factors

16. Wounds in Combat -

This factor indicates whether an applicant suffered bodily injury in "combat zone"; whether or not he received a Purple Heart Award. A Purple Heart is sufficient to bring about this factor.

SUMMARY OF DECISION: EFFECTIVE APRIL 8, 1975

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D. C. 20500

Calculation of Baseline for Alternative Service:

Starting Point	24	Months
Less Three Times _____ Months in Prison	-_____	Months
Less Alternative Service Performed if Period Satisfactorily Completed	-_____	Months
Less Time Served on Probation or Parole if Period Satisfactorily Completed	-_____	Months
BASELINE	_____	Months
Judge's Sentence to Imprisonment as Reduced by Competent Authority, which is the Baseline if Less Than the Above Figure	_____	Months
Minimum Baseline	3	Months
Final Baseline for Determining the Period of Alternative Service	_____	Months

Aggravating Factors:

(1). _____ Other adult convictions
(2). _____ False statement by applicant to the Presidential Clemency Board
(3). _____ Use of force by applicant collaterally to AWOL, desertion, or missing movement or civilian draft evasion offense
(4). _____ Desertion during combat
(5). _____ Evidence that applicant committed offense for obviously manipulative and selfish reasons
(6). _____ Prior refusal to fulfill alternative service
(7). _____ Violation of probation or parole
(8). _____ Multiple AWOL/UA offenses
(9). _____ AWOL/UA of extended length _____
(10). _____ Failure to report for overseas assignment
_____ None of the above

Mitigating Factors:

(1). _____ Lack of sufficient education or ability to understand obligations or remedies available under the law
(2). _____ Personal and immediate family problems
(3). _____ Mental or physical condition
(4). _____ Employment and other activities of service to the public
(5). _____ Service-connected disability
(6). _____ Extended period of creditable military service _____
(7). _____ Tours of service in the war zone
(8). _____ Substantial evidence of personal or procedural unfairness
(9). _____ Denial of conscientious objector status on procedural, technical, or improper grounds
(10). _____ Evidence that an applicant acted for conscientious, not manipulative or selfish reasons
(11). _____ Voluntary submission to authorities by applicant
(12). _____ Behavior which reflects mental stress caused by combat
(13). _____ Volunteering for combat, or extension of service while in combat
(14). _____ Above average military conduct and proficiency or unit citations
(15). _____ Personal decorations for valor
(16). _____ Wounds in combat
_____ None of the above

Based on these factors, the Board's decision is that the _____ month baseline should be _____. Therefore, a pardon will be granted after performance of _____ months of alternative service.

_____ Case Number

_____ Staff Attorney