The original documents are located in Box 3, folder "Final Report - Draft, Undated (1)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

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Classification

Immediately after our applicants registered with the local board, they were given Selective Service classifications. There were a number of different kinds of deferments and exemptions for which our applicants applied to their local boards. Many of the 44% of our applicants who attended college received student deferments. Some applied for hardship deferments, occupational deferments, physical or mental exemptions, or ministerial exemptions (particularly the 21% of our applicants who were Jehovah's Witnesses). The greatest number applied for conscientious objector exemptions. Some applied for numerous deferments and exemptions with draft boards showing great patience in approving legitimate claims and offering full procedural rights even for claims that were obviously dilatory.

(Case #04550) Applicant had a student deferment from 1965 to 1969. He lost his deferment in 1969, apparently because of his slow progress in school (he did not graduate until 1973). His two appeals to keep his student deferment were denied. After passing his draft physical and having a third appeal denied, he applied for a conscientious objector exemption. This was denied, and his appeal was denied after a personal appearance before his state's draft board director. After losing another appeal to his local board, he was ordered to report for induction. One day after his reporting date, he applied for a hardship postponement because of his wife's pregnancy. He was granted a nine-month postponement. He then requested to perform civilian work in lieu of military service, but to no avail. After his wife gave birth, he fled to Canada with her and the child. He returned to the United States a year later, and was arrested.

Many of our applicants hired attorneys to help them submit classification requests and appeals. Others relied on the advice of local draft clerks. However, it was the responsibility of our applicants to make themselves aware of the legal rights available to them.

(Case #02290) Applicant made no attempt to seek a personal appearance before the local board or appeal their decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

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

(Case #00537) Applicant initially failed to fill out a form to request conscientious objector status because the religious orientation of the form led him to believe he would not qualify. After Welsh, he believed he might qualify under the expanded "moral and ethical" criteria, so he requested another form. When his local board sent him a form identical to the first one, he again failed to complete it, believing that he could not adequately express his beliefs on a form designed for members of organized religious.

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

(Case #03548) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification was an orthodox religious belief in a supreme being.

Some of our applicants' requests for deferments or exemptions were granted; others were denied. In case of denial, an individual could appeal his local board's decision to the state appeals board. A few of our applicants claimed that local board procedures made appeals difficult, but it was their own responsibility to learn about their opportunities for appeal.

(Case #00596) Applicant claimed that he was given no reasons for the denial of his claim for conscientious objector status. Consequently, he said that he was unaware of how or where to appeal his case to a higher level.

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

(Case #02317) Applicant, a Jehovah's Witness, was unaware of the time limitations on filing notices of appeal. He continued to gather evidence for his appeal, but it was ultimately denied on the procedural grounds of his failure to make timely application for appeal.

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

(Case #04296) Applicant failed to appeal his local board's denial of his conscientious objector claim, which he claimed was done without giving any reasons for the denial. Although his trial judge indicated that the local board's action was improper, he nevertheless approved a conviction because applicant had failed to exhaust his administrative remedies by appealing his local board's decision.

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

(Case #02317) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim for reclassification. Despite this rehearing, his local board found the evidence insufficient to merit a reopening of his case. Without a formal reopening, applicant could not appeal his board's findings upon rehearing.

Our applicants applied these procedural rights in their requests for all types of deferments and exemptions. Some of their claims appeared to be contorted efforts to avoid induction.

(Case #01121) Applicant claimed that his wife, who had been under psychiatric care, began to suffer hallucinations when he received his induction notice. He requested a hardship deferment, with two psychiatrists claiming that he should not be separated from his "borderline psychotic" wife. This request was denied. Applicant later tried to get a physical exemption by having braces fitted on his teeth. However, he instead was convicted of conspiring to avoid induction. (His dentist also faced charges, but fled to Mexico to escape trial. He applied to our Board for clemency, but we did not have jurisdiction over his case.)

(Case #01068) Applicant instructed his draft board that he had a weak back and weak knees. The physician who examined him refused to verify this. Applicant then forged the physician's name and returned the document to his draft board.

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

(Case #10792) Applicant's father was deceased, and his mother was disabled and suffered from sickle cell anemia. His request for a hardship deferment was denied. Also, applicant claimed that he suffered from a back injury. This allegation was supported by civilian doctors, but denied by military doctors.

(Case #11758) Applicant's parents were divorced when he was 16, with his father committed to a mental institution. Applicant dropped out of school to support his mother. A psychiatrist found applicant to suffer from claustrophobia, which would led to severe depression or paranoid psychosis if he entered the military. However, he did not receive a psychiatric exemption.

The classification of greatest concern to most of our civilian applicants was the conscientious objector exemption. We have evidence that almost half (44%) took some initiative to obtain a "CO" exemption.

Twelve percent of our applicants were granted CO status, 17% applied but were denied, and the remaining 15% never actually completed a CO application.

Of the 56% of our applicants who took no initiative to obtain CO status, roughly half (25%) committed their draft offenses for reasons unrelated to their opposition to war. Others may not have filed for a CO exemption because they were unaware of the availability of the exemption, knew that current (pre-Welsh) CO criteria excluded them, or simply refused to cooperate with the draft system.

(Case #10768) Applicant, a Jehovah's Witness, had his claim for a ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and ordered to report for induction. (He complied with his draft order, but he later went AWOL and received an Undesirable Discharge.)

(Case #01213) Applicant did not submit a CO application because it was his understanding that current (pre-Welsh) CO rules required that he be associated with a widely recognized pacifist religion. His refusal to participate in war stemmed from his personal beliefs and general religious feelings.

(Case #03506) Applicant, a Jehovah's Witness, refused to file for CO status because he felt that by so doing he would be compromising his religious principles, since he would be required by his draft board to perform alternative service work.

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

(Case #00803) Applicant filed a CO claim in 1969, after he received his order to report for induction. His draft board postponed his induction date and offered him a hearing. However, applicant did not come to his hearing and advised his draft board that he no longer desired CO status. He stated at trial that he decided not to apply for a CO exemption because the law excluded political, sociological, or philosophical views from the "religious training and beliefs" necessary for CO status at the time.

Some did not pursue a CO exemption because of their inability to qualify under pre-Welsh rules. Occasionally, applicants claimed that they had been discouraged from applying. However, it was their responsibility to make further inquiry about their legal rights.

(Case #00803) In reply to applicant's request for a CO application form, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, he did not bother to return the form.

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

(Case #12828) Applicant wished to apply for CO status, but his form was submitted late and was not accepted by his local board. His lawyer had lost his application form in the process of redecorating his office.

(Case #00014) Applicant applied for CO status after his student deferment had expired. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Consequently, his local board refused to consider his CO application.

In the midst of the Vietnam War, the substantive law regarding conscientious objectors changed dramatically, profoundly affecting the ability of a great number of our applicants to submit C.O. claims with any reasonable chance of success. In June 1970 the Supreme Court clarified conscientious objection in Welsh v. United States, supra, stating that this exemption should be extended to cover those whose conscientious objection stemmed from a secular belief. Section 6(j) was held to exempt from military service those persons who consciences, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument or war. In the later case of Clay v. U.S. ( ), the court stated the three requirements for CO classification as: (1) It must be opposition to war in any form; (2) the basis of opposition to war must be moral, ethical, or religious; and (3) the beliefs must be sincere.

Why then, did so few of our applicants apply for CO status? Twenty-three percent of our applicants claimed that they committed their offense primarily because of ethical or moral opposition to all war -- and 33% said they committed their offense at least partly

because of such ethical or moral feelings. However, only 11% took any initiative to obtain a CO exemption, and 8% filed for CO status. Only 0.2% were successful.

Ninety percent of our applicants registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many of our applicants passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and 35% committed their draft offense before the decision. However, only 13% were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but twice that proportion (26%) pled guilty to their charges.

Two explanations are the most persuasive in explaining why more of our applicants did not apply for (or qualify for) a CO exemption. A great many apparently did not understand what Selective Service rules were or what defenses could be raised at trial. Many others objected not to war in general, but to the Vietnam War alone. These "specific war" objectors could not qualify for a CO exemption even under the post-Welsh guidelines.

(Case #02320) Applicant failed to submit a CO application after allegedly being told by his local board that only members of certain religious sects were eligible. This occurred after the Welsh decision.

(Case #02338) Applicant's claim for conscientious objector status was denied by his local board because he objected only to the Vietnam War, rather than all wars.

It did not appear that the CO application form, discouraged CO applications;

28% of those with college degrees applied for CO status, versus 19% of those with less education. Our less-educated applicants were successful in 53% of their CO claims, while those with college degrees were successful in only 14% of their CO claims. This may be attributable to the fact that those with less education more often based their claims on religious, rather than moral or ethical, grounds.

Finally, some of our applicants claimed that they were denied CO status because it is claimed that some local boards applied pre-Welsh rules to their post-Welsh CO claims. Of our civilian applicants who raised post-Welsh "moral and ethical" CO claims, only 10% were successful. By contrast, CO applicants who claimed to be members of pacifist religions enjoyed a 56% success rate before and after Welsh. However, many may have failed to meet the post-Welsh requirements Local Boards made their determinations on the basis of the Full record available to them.

(Case #01373) Applicant's request for conscientious objector status was denied, partially on the basis that he had no particular religious training or experience to establish opposition to war. This determination was made after Welsh ruled that such formal religious training was not a prerequisite to conscientious objector status.

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CHAPTER III. CASE DISPOSITIONS

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A. SUMMARY

The products of our year's work on the Clemency Board were our 16,000 case dispositions. Most Board members participated in thousands of these decisions, each one carefully determined on the basis of our baseline formula and designated factors. In hearing so many cases, some inconsistencies were bound to occur. However, the process we followed and the substantive rules we applied reduced these inconsistencies to a minimum. For example, our pardon rate was the same for black and white applicants -- (43%). Almost always, our different treatment of different kinds of individuals reflected the contrasting facts of their cases.

Our case dispositions for civilian applicants were considerably more generous than for our military applicants. Our pardon rate for civilians was over twice that for discharged servicemen, while our civilian No Clemency rate was less than one-fifth of that for servicemen for military applicants.

Our actual case dispositions are listed below:*

PCB FINAL DISPOSITIONS - CIVILIAN*

	Number	Percent	Cumulative
Pardon	1652	82.6	82.6
1-3 mos.	164	8.2	90.8
4-6 mos.	98	4.9	95.7
7-9 mos.	22	1.1	96.8
10-12 mos.	34	1.7	98.5
13 + mos.	8	0.4	98.9
No Clemency	22	1.1	100.0
Total	2000		

*These are projections based upon current Board trends.

PCB FINAL DISPOSITIONS - MILITARY*

	Number	Percent	Cumulative
Pardon	4888	37.6	37.6
1-3 mos.	2613	20.1	57.7
4-6 mos.	2977	22.9	80.6
7-9 mos.	1235	9.5	90.1
10-12 mos.	442	3.4	93.5
13 + mos.	26	0.2	93.7
No Clemency	819	6.3	100.0
Total	14,000		

PCB FINAL DISPOSITIONS - TOTAL *

	Number	Percent	Cumulative
Pardon	6540	43.6	43.6
1-3 mos.	2777	18.5	62.1
4-6 mos.	3075	20.5	82.6
7-9 mos.	1257	8.4	91.0
10-12 mos.	476	3.2	94.2
13 + mos.	34	.2	94.4
No Clemency	841	5.6	100.0
Total	16,000		

B. Impact of Baseline Calculations and Aggravating/Mitigating Factors

Our case dispositions were made on the basis of our baseline calculation and our application of aggravating and mitigating factors. Almost all of our applicants' alternative service baselines were three months, and less than 2% had baselines of over six months. This was the single most important factor contributing to our 44% pardon rate and the short periods of alternative service assigned to most of the rest.

Baseline	Civilian	Military
3 months	94.6%	87.8%
4-6 months	2.9%	15.5%
7-12 months	0.7%	0.6%
13-24 months	1.9%	0.7%

Our application of mitigating and aggravating factors affected our decision to grant clemency -- and, if so, to go up or down from the alternative service baseline. We applied these factors with different frequency and with different

* These are projections based upon current Board trends.

weight. The table on the following page shows the relative frequency of all factors. Note the difference between the factors most often applied in civilian and military cases. The typical civilian case had no aggravating factors, but had mitigating factors #4 (public service), #10 (motivated by conscience), and #11(surrendered). The typical military case had aggravating factors #1 (other civilian or court-martial convictions), #8 (multiple AWOLs), and #9 (extended length of AWOL), along with mitigating factor #6 (creditable military service).

PERCENTAGE OF AGGRAVATING AND MITIGATING FACTORS APPLIED TO ALL CASES

		Civilian	Military
AF1	Other Adult Convictions	4.04%	52.57%
AF2	False Statement to PCB	.06%	.10%
AF3	Use of Physical Force in Offense	.06%	.26%
AF4	Desertion During Combat	.13% *	1.63%
AF5	Selfish Motivation for Offense	15.41%	31.34%
AF6	Failure to do Altomative Service	3.79%	.05%
AF7	Violation of Probation or Parole	4.49%	6.94%
AF8	Multiple AWOL/UA Offenses	.75% *	86.07%
AF9	Extended Length of AWOL/UA	.44% *	71.55%
AF10	Missed Overseas Movement	.19% *	7.23%
AF11	Other Alleged Offenses or Specifications	.13% *	4.63%
AF12	Apprehension by Authorities.	7.45%	37.15%
	None	72.27%	1.00%
MF1	Inadequate Education	2.91%	31.83%
MF2	Personal/Family Problems	8.53%	49.18%
MF3	Physical/Mental Problems	9.10%	19.33%
MF4	Public Service	57.23%	2.19%
MF5	Military Service Connected Disability	.25% *	2.05%
MF6	Creditable Military Service (Length)	2.27% *	84.45%
MF7	War Zone Service	.57% *	26.08%
MF8	Procedural Unfairness	5.56%	14.06%
MF9	Denial of CO Status	8.40%	.36%
MF10	Motivated by Conscience	72.64%	2.48%
MF11	Voluntarily Surrendered to Authorities	58.88%	37.23%
MF12	Mental Stress from Combat	.06%	5.06%
MF13	Combat Volunteer	.13% *	8.97%
MF14	Military Performance Ratings	.88% *	38.86%
MF15	Decorated for Valor	— *	2.08%
MF16	Wounded in Combat.	.13% *	3.49%
	None	4.86%	2.17%

* A small number of Civilian violators later went into the service.

The weight with which we applied our factors is difficult to assess, even in hindsight. We often designated factors as "weak" or "strong" when making case dispositions, and some factors were applied in a variety of ways. For example, aggravating factor #1 was applied if an applicant had received a prior court-martial for an AWOL offense before his discharge, and it was applied (with much more significance) if he had been convicted for a violent felony offense.* Our tables do not distinguish between the two.

Nevertheless, some interpretation of the weights of our factors can be inferred from the table on the following page. This table shows the frequency with which we applied each factor in our three basic types of dispositions -- outright pardons, alternative service, and no clemency.** For example, we applied aggravating factor #1 (other adult felony convictions) in 1.8% of our civilian pardon cases, 11.2% of our civilian alternative service cases, and 78.9% of our civilian no clemency cases. From this table, it appears that the presence or absence of the following factors had some relationship to an applicant's likelihood of receiving a pardon or a no clemency disposition. Others appeared to have no such relationship, and still others were applied so infrequently to prevent any inference from being drawn.

Civilian		Military	
Pardon	No Clemency	Pardon	No Clemency
Agg 1	Agg 1	Agg 5	Agg 1
Agg 5	Agg 7		Agg 4
Agg 7		Mit 2	Agg 7
Mit 4	Mit 4	Mit 3	Agg 11
Mit 9	Mit 10	Mit 5	
Mit 10	Mit 11	Mit 6	
		Mit 7	Mit 2
		Mit 8	Mit 10
		Mit 11	Mit 11
		Mit 12	
		Mit 13	
		Mit 14	
		Mit 15	

* See Chapter II-F for a description of how we determined whether to apply each of our factors.

** This table is based upon data from all of our case dispositions.

Frequency of Factor Applications by Type of Disposition

	Civilians			Military		
	Pardon	A/S	No Clemency	Pardon	A/S	No Clemency
Other Adult Felony Convictions	1.8%	11.2%	78.9%	48.6%	50.5%	94.4%
False Statement to PCB	-	.4%	-	.1%	.1%	.4%
Use of Physical Force in Offense	-	.4%	-	.2%	.3%	.7%
Desertion from Combat	.1%	-	-	1.7%	1.1%	5.8%
Selfish Motivations for Offense	7.6%	58.3%	63.2%	13.1%	41.9%	46.4%
Failure to complete A/S	3.1%	8.1%	5.3%		*	.3%
Violation of Probation or Parole	2.2%	16.1%	26.3%	5.1%	7.6%	12.2%
Multiple AWOL/UA offenses	.5%	1.8%	5.3%	85.8%	86.0%	88.6%
Extended Length of AWOL/UA	.3%	1.3%	-	68.1%	75.5%	57.2%
Missed Overseas movement	.1%	.4%	-	5.3%	8.9%	4.4%
Other alleged offenses	.1%	-	-	4.5%	3.8%	12.3%
Apprehended by authorities	7.5%	8.1%	-	30.3%	42.3%	33.0%
	81.3%	23.8%	5.3%	2.1%	.4%	.1%
Inadequate Education	2.7%	4.0%	5.3%	37.7%	27.5%	34.9%
Personal Family problems	7.4%	14.8%	15.8%	55.8%	47.3%	26.5%
Physical/Mental problems	8.2%	14.3%	10.5%	24.8%	15.8%	18.2%
Public service	62.3%	31.4%	5.3%	3.0%	1.9%	.5%
Military Service Disability	.2%	.4%	-	4.6%	.4%	.8%
Lengthy Creditable Military Service	2.2%	2.2%	10.5%	93.9%	79.0%	76.9%
Served in War Zone	.6%	.4%	-	53.1%	8.7%	19.3%
Procedural Unfairness	5.7%	4.9%	5.3%	24.2%	8.3%	5.0%
Denial of CO Status	9.2%	4.0%	-	.6%	.2%	.1%
Motivated by Conscience	80.7%	30.5%	-	3.7%	2.0%	.1%
Voluntarily Surrendered	61.5%	46.6%	15.8%	43.9%	34.2%	24.5%
Mental Stress from Combat	1%	-	-	12.1%	.7%	1.6%
Volunteered for Combat	.1%	-	-	17.9%	3.5%	4.2%
High military Performance Ratings	1.0%	-	-	60.0%	26.4%	23.0%
Decorated for Valor	-	-	-	5.3%	.1%	.2%
Wounded in Combat	.1%	-	-	8.6%	.2%	2.1%
	2.0%	18.4%	47.4%	.1%	3.0%	7.2%

*Less than .05%

Civilian

No Apparent Effect

Agg 6
Agg 12
Mit 1
Mit 2
Mit 3
Mit 6
Mit 8

Military

No Apparent Effect

Agg 8
Agg 9
Agg 12
Mit 1

The relationship between our factors and our case dispositions can be seen even more clearly in the table on the following page. It shows the likelihood of each type of case disposition, given the presence of a particular factor.* For example, a civilian case with mitigating factor #11 (surrender) resulted in an outright pardon 85% of the time, alternative service 14% of the time, and no clemency in the other 1%. From this table, the following inferences can be drawn about the strength of the various factors.

Civilian		Military	
Strong	No Effect	Very Strong	Strong
Agg 1	Agg 3	Agg 4	Agg 1
Agg 5	Agg 6	Agg 11	Agg 2
Agg 7	Agg 12		Agg 3
			Agg 5
Mit 4	Mit 1	Mit 12	Agg 7
Mit 8	Mit 2	Mit 13	
Mit 9	Mit 3	Mit 15	
Mit 10	Mit 6	Mit 16	
Mit 11			Mit 4
			Mit 5
			Mit 7
			Mit 8
		Weak	No Effect
		Agg 10	Agg 8
		Agg 12	Agg 9
		Mit 9	Mit 1
		Mit 10	Mit 2
		Mit 14	Mit 6
			Mit 9
			Mit 11

* This table is based upon findings from our survey of 472 civilian and 1009 military cases.

	Civilian				Military		
	Pardon	A/S	NC		Pardon	A/S	NC
Agg				Agg			
1	33	48	19	1	36	49	16
2	-	-	-	2*	17	67	17
3*	67	33	-	3	27	55	18
4	-	-	-	4	29	29	42
5	35	63	3	5	16	67	17
6	62	38	0	6	-	-	-
7	30	67	4	7	19	67	14
8	-	-	-	8	39	51	9
9	-	-	-	9	40	53	7
10	-	-	-	10	25	67	7
11	-	-	-	11	45	17	38
12	94	6	-	12	31	57	11
None	89	11	-	None	53	47	0
Mit				Mit.			
1	59	41	0	1	46	47	7
2	62	33	5	2	46	50	5
3	67	33	0	3	52	44	3
4	88	12	0	4	73	27	0
5	-	-	-	5	74	23	3
6	42	33	25	6	45	46	7
7	-	-	-	7	78	15	7
8	83	17	0	8	63	35	2
9	87	13	0	9*	44	55	0
10	88	12	0	10	52	48	0
11	85	14	1	11	44	49	6
12	-	-	-	12	90	6	3
13	-	-	-	13	86	13	1
14	-	-	-	14	59	36	5
15	-	-	-	15	93	5	2
16	-	-	-	16	95	3	3
None	40	56	4.0	None	10	57	27

*
Small sample

One problem with the preceding tables is that they focus on factors separately, rather than in combination. Often, aggravating and mitigating factors meant much more when they were applied in particular combinations. For example, mitigating factor #6 indicated the length of an applicant's military service, while mitigating factor #14 indicated the quality of that service. The two together told a much different story about a person than did one without the other. The following three tables show how our range of dispositions varied depending on single-factor changes in our mix of mitigating and aggravating factors. The mean case disposition is underlined for each combination of factors.* From these tables, it appears that all factors included in them had at least a slight effect upon our case dispositions. (Recall that the preceding analysis finds otherwise-- that aggravating factor #9 and mitigating factor #6 had no effect in military cases.)

Impact of Selected Factors on Civilian Case Dispositions

Agg #	Mit #	# of Cases	Pardons	3 AS	4-6 AS	7+ AS	NC
-	4, 9, 10, 9	14	14	—	—	—	—
-	4, 10	144	139	4	1	—	—
-	10	74	69	3	2	—	—
-	-	25	16	5	1	3	-
5	-	20	1	9	8	1	1
15	-	4	1	-	-	1	2
1,5,7	-	2	-	-	-	-	2

Impact of Selected Mitigating Factors on Military Case Dispositions

Agg #	Mit #	# of cases	Pardons	3AS	4-6AS	7+ AS	NC
1,8,9,12	1,2,6,7,14	11	11	-	-	-	-
1,8,9,12	2,6,7,14	28	23	3	1	-	1
1,8,9,12	2,6,14	79	34	21	18	3	3
1,8,9,12	2,6,	114	20	29	47	13	5
1,8,9,12	2	50	2	3	13	26	6
1,8,9,12	-	7	-	-	1	1	5

Impact of Selected Aggravating Factors on Military Case Dispositions

Agg #	Mit #	# of Cases	Pardons	3AS	4-6AS	7+AS	NO CL
-	6	2	-	1	1	-	-
8	6	11	-	5	5	1	-
5,8	6	17	1	2	7	7	-
1,5,8	6	34	2	2	14	6	10
1,5,8,9	6	38	-	2	9	16	11
1,5,8,9,11	6	3	-	-	-	1	2

C. Civilian Case Dispositions

Our civilian applicants received mostly outright pardons (83%), with a much smaller proportion assigned to alternative service (16%), and very few denied clemency (1.1%). The following table shows the most frequent combinations of factors in civilian cases. The cases represented in the table accounted for over half of all our civilian cases. Aggravating factors were virtually absent in these cases, and mitigating factor #10 (conscientious reasons for offense) appeared in the six most frequent combinations of factors.

Most Frequent Civilian Cases

Agg Factors	Mit Factors	# Cases	Pardon	AS	NoCl
-	4,10,11	375	370	5	0
-	10,11	161	159	2	0
-	4,10	144	139	5	0
-	10	74	69	5	0
-	4,9,11	33	33	0	0
-	9,10,11	32	32	0	0
-	4	31	30	1	0
5	11	26	8	18	0
-	-	25	16	9	0

Civilian cases which received outright pardons typically had no aggravating factors (or just #12, apprehension), mitigating factor #10 (conscientious reasons), and mitigating factor #4 (public service). The table below lists the combinations of factors which had the greatest proportion of outright pardons.*

Civilian Pardon Cases

Agg Factors	Mit Factors	# Cases	# Pardons
-	4,9,10,11	33	33
-	9,10,11	32	32
12	10	16	16
-	4,9,10	14	14
-	3,4,10,11	10	10
-	10,11	161	159
-	4,10,11	375	370
-	4,11	31	30
12	4,10	22	21
-	10	74	69
-	2,4,10,11	12	11

From our sample of civilian applicants,**it appears that those most likely to receive outright pardons were Jehovah's Witnesses (96%)***who were granted CO status (92%), whose offense was failure to perform draft-board-ordered alternative service (94%) because of their membership in a religion opposed war (92%), who were sentenced to alternative service (84%), and who completed over two years of court-ordered alternative service work (90%).

Also likely to receive an outright pardon was a civilian applicant with a college education (82%) who had a CO application denied (82%), refused to submit to induction (81%) because of ethical or moral opposition to war (78%), who surrendered (80%), served more than one year in prison (78%), who was in school at the time of his clemency application (85%), who submitted a letter

*The combinations listed are those with 10 or more pardons, accounting for 90% or more of all case dispositions for a particular factor combination.

** The mean pardon rate found in our sample was 74.5%. The Board's final pardon rate for civilian cases was 82.6%. The reason for this discrepancy is that our sample contained a disproportionate number of cases decided early. See Chapter V.

*** The percentages refer to the percentage of applicants with each characteristic (not in combination with any other characteristic) who received outright pardons. As noted above, 74.5% was the mean percentage.

in support of his application (79%), and whose Selective Service files were used by our case attorney in preparing his case summary (82%).

Much less likely to receive an outright pardon was a civilian applicant of a minority background other than black (55%) from a severely unstable family background (63%), who had only a grade school education (59%) and an IQ under 90 (59%), whose offense was failing to register for the draft (58%) or failing to keep his board informed of his address (58%), whose offense was not related to opposition to war (65%) or involved specific opposition to the Vietnam War (62%), who fled to a foreign country (55%) before being apprehended (59%), who served 1 - 12 months in prison (59%), who has committed another non-violent felony (25%) or violent felony (0%), who was either underemployed (67%) or incarcerated (11%) at the time of his application, and whose records were incomplete when our case attorney prepared his summary (60%).

The following case is a typical civilian applicant who received an outright pardon.

(Case #00552) Applicant filed for a C.O.'s exemption on the basis of his ethical conviction that the preservation of life was a "Fundamental point of my existence." The local board denied it, presumably because his convictions were ethical and not religious. Furthermore, he never received noticethat his request was denied. When ordered to report for induction, he argued that he had not been informed of the denial and requested an appeal. His local board denied this request because the 30-day appeal period had expired and mailing the denial of applicant's request to his home constituted constructive notice of the contents. Applicant refused induction, voluntarily appeared at his trial, pled guilty and received a sentence of three years' probation. During that period he worked as a pharmacist for alternative service, but he also worked as a volunteer on a drug abuse hotline and served on the Board of Directors of the town's Youth Commission.

The civilian cases resulting in Alternative Service generally fell into two categories. First, some civilian applicants who have committed their offense for conscientious reasons but served only a portion of their sentences.

(Case #00022) Applicant claimed his refusal to report for induction was based on his philosophical convictions regarding life. He was sentenced to three years in prison but served only six months when he received a furlough because of the clemency program.

The second category of alternative service cases were those in which the applicant committed offense for slightly selfish reasons, but there were no other serious aggravating circumstances.

(Case #548) Applicant was convicted of failure to inform the local board of his current address. At the time he was drifting around with no fixed address so he did not bother to keep in touch with his local board.

Civilian cases which received no clemency dispositions almost always had aggravating factor #1 (other adult felony convictions), and usually had aggravating factor #5 (selfish reasons for offense) and no mitigating factors. The table below lists the only combinations of factors which accounted for two or more civilian no clemency cases.

Civilian No Clemency Cases

Agg Factors	Mit Factors	# Cases	# No Clemency
1,5,7	-	2	2
1,5	-	4	2
1	-	5	2

From our sample, the civilian applicants most likely to be denied clemency** were black (4.9%)* with a grade school education (3.3%) and an IQ under 90 (5.9%), whose offense was failing to register for the draft (8.3%), who did not commit the offense because of opposition to war (12.6%), who was sentenced to probation (2.4%), who performed no alternative service (2.5%), who has committed

* The mean no clemency percentage in our sample was 1.3%.

** The percentages refer to the percentage of applicants with each characteristic (not in combination with any other characteristic) who were denied clemency.

another non-violent felony offense (6.7%) or a violent felony offense (100%), who was incarcerated at the time of his clemency application (33%), whose lawyer communicated with us while his clemency application was pending (5.5%), and whose records were incomplete at the time our case attorney prepared his summary (5.2%).

Two-thirds of our civilian no clemency dispositions were attributable to our applicants' convictions for violent felony offenses. The following case is typical.

(Case #02407) This civilian applicant had three other felony convictions in addition to his draft offense. On 23 September 1970 he received a one-year sentence for sale of drugs. In 1971 he received one year of imprisonment and two years of probation for possession of stolen property. On 18 October 1972 he was convicted of failure to notify his local board of his address and sentenced to three years' imprisonment which was suspended and applicant was placed on probation. His probation was not satisfactorily completed because on 23 March 1974 he was convicted of assault, abduction and rape for which he received a 20-year sentence.

The other no clemency case dispositions went to applicants whose attitude and uncooperativeness were contradictory to the spirit of the clemency program.

(Case #10374) Applicant wrote the local board and asked for a postponement of his induction because he alleged he had received injuries in a car accident which disqualified him for military service. He did not submit a physician's statement. The board, therefore, ordered to report. He claimed the board had ignored his earlier request and did submit a statement from his doctor showing that he had received some injuries in a car accident. However, another doctor examined the applicant and found him completely healed. Applicant refused induction and was convicted; he received a sentence of 30 days in jail and 2 years' probation. He admitted in an interview with the probation officer that his reason for refusing induction was that he did not want to go into the Army because he had recently married and his wife was pregnant. The Probation Officer reports that applicant's adjustment to probation is poor; he has shown no initiative and is out of work most of the time. His wife is now supporting him.

Not all of our civilian cases fell clearly into the categories described above. In a very few cases, our Board was sharply divided -- especially where very strong mitigating and aggravatingfactors conflicted with one another. Consider the following case:

(Case #0041) Applicant had a very unstable family background, with an alcoholic father who had a series of wives. Despite this, applicant graduated near the top of his class, was senior class president, and completed two years of college. He applied for an received CO status, but he failed to report to his alternative service work at a local hospital. Instead, he traveled through Europe and the Middle East. He was arrested for smuggling hashish in Lebanon and served nine months in a Lebanese prison. Thereafter, he joined a religious cult which advocated trepanation (drilling a hole in one' head). He performed the operation on himself, but suffered an infection and had to be hospitalized. He was convicted for his draft offense and was sentenced to two years imprisonment. He served seven months before being furloughed for his clemency application. A prison psychiatrist indicates that applicant sufferes from paranoid schizophrenia, said to be caused by his belief in trepantation..

This case was debated by our full Board on four separate occasions. Originally, the Board was sharply split between outright pardon, because of the conscientious nature of his beliefs and his apparent mental problems--and no clemency because of his hashish smuggling conviction and his selfish failure to perform alternative service of his offense. After much discussion, the Board decided to recommend clemency. The issue then became whether he should perform at least a miminal period of service, but there was concern that he would be unable to perform it. Finally, a divided recommendation was presented for the President who approved the majority's recommendation of an outright pardon.

D. Military Case Dispositions

Most of our military applicants were assigned to alternative service (56%), with a smaller proportion receiving outright pardons (38%), and the others denied clemency (6.3%). The following table shows the most frequent combinations of factors in military cases. All had aggravating factors #8 (multiple AWOLs) and #9 (lengthy AWOL) and mitigating factor #6 (creditable military service). All but one had mitigating factor #2 (personal or family problems). However, these cases represent just 4% of all military cases, because of the great variety of factor combinations applied to these cases.

Most Frequent Military Cases

Agg Factors	Mit Factors	# Cases	Pardon	AS	No Clemency
1,8,912	2,6	114	20	89	5
8,9,12	2,6	85	12	73	0
1,5,8,19,2	6	81	1	75	7
1,8,9	2,6,11	81	18	56	3
1,8,9,12	2,6,14	79	34	32	0
1,8,9,12	1,2,6	70	16	51	3

Military cases which received outright pardons typically had mitigating factors #2 (personal or family problems), #6 (creditable military service), #7 (Vietnam service), and #14 (satisfactory military performance). The table below lists the combinations of factors which had the greatest proportion of outright pardons.*

*The combinations listed are those with 10 or more pardons, accounting for 80% or more of all case dispositions for a particular factor combination.

Military Outright Pardon Cases

Agg Factors	Mit Factors	# of Cases	# pardons
1,8,9,12	1,2,6,7,14	11	11
8,9,12	2,6,7,14	11	11
8,9	1,2,6,7,11,14	10	10
1,8,9	2,6,7,11,14	16	15
1,8,9	2,6,7,11,14	13	12
1,8,9,12	1,2,6,8,14	11	10
8,9	2,6,7,14	23	19
1,8,9,12	2,6,7,14	28	23
8,9,12	2,6,7,14	21	17
8,9	1,2,6,8,11	15	12

From our sample military applicants, those most likely to receive outright pardons were blacks (47%)* or persons of other minority backgrounds (55%), born before 1945 (52%), with an AFQT score of Category IV (46%), who had over two years (62%) or over three years (78%) of creditable military service, including a partial Vietnam tour (61%) or a full Vietnam tour (83%) or multiple Vietnam tours (93%), whose last AWOL offense was after 1971 (46%), whose AWOLs were attributable to post-combat psychological problems (88%), who was under-employed at the time of his application (50%), and whose lawyer communicated with us while his clemency application was pending (78%).

*The mean pardon rate found in our sample was 40.5%. The Board's final pardon rate for military cases was 37.6%. The reason for this discrepancy is that our sample contained a disproportionate number of cases decided early. See Chapter V.

Those less likely to receive outright pardons were applicants with college educations (25%), who had less than 12 months of creditable military service (22%), who never went to Vietnam (27%), who went AWOL because of conscientious opposition to war (15%), who immediately returned after going AWOL (30%), who has committed a violent felony offense (20%), and whose records were incomplete at the time our case attorney prepared his summary (29%).

The most clear outright pardon cases among our military applicants were those with truly outstanding service records prior to their AWOL problems. These particularly meritorious cases (3-6%) were referred to our Full Board for possible recommendation to the President that their discharges be upgraded and that they receive veterans benefits. As a minimum applicants must have had creditable service and a tour in Vietnam to be considered, but wounds in combat, decorations for valor, and other mitigating factors were also important.

(Case #09067) Applicant had 4 AWOL's totalling over 8 months, but he did not begin his AWOL's until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the U.S. was wrong in getting involved in the war and that he "was wrong in killing people in Vietnam." He had over three years' creditable service with 14 excellent conduct and efficiency ratings. He re-enlisted to serve his second tour within 3 months of ending his first. He served as an infantry man in Vietnam, was wounded, and received the Bronze Star for valor.

Our less meritorious military pardon cases either had understandable reasons for their offenses or committed relatively minor AWOL offenses had had good service records.

(Case #12631) Applicant enlisted in 1960 and had a good record. In 1963 he married, but he began to have marital problems soon afterwards. He was in a car accident in 1964. The combination of these two influences drove him to drink, and he became an alcoholic. His frequent AWOL's were directly attributable to his alcoholism.

(Case #11606) Applicant had 4 AWOL's totalling 6 days and surrendered after the last two. He had 1 year and 9 months' creditable service with above average conduct and proficiency ratings and served a tour in a task force patrolling the waters off Vietnam.

The bulk of our military cases resulted in alternative service dispositions. As a general rule, these cases involved both aggravating and mitigating factors which balanced one another. Where some factors outweighted others, we went up or down from our alternative service "baseline," usually by 3-6 months.

(Case #00291) The applicant commenced his first AWOL after he was assaulted by a cook while in KP. After his second AWOL, he was allegedly beaten by 5 MP's while confined in the stockade. On the other hand, he committed four AWOL's, the last one lasting almost 3½ years, and had less than one month of creditable service.

(Case #14813) Applicant went AWOL because he was involved with a girl and was using drugs. He is presently incarcerated in a civilian prison for a minor breaking and entering. On the other hand, his two AWOL's were each of a few days duration, and he is a very low category IV AFQT.

Military cases which received no clemency dispositions almost always had aggravating factor #1 (other adult felony convictions), and usually aggravating factor #5 (selfish reasons for offense) and no mitigating factors other than #2 (creditable military service). The table below lists the combinations of factors most likely to result in no clemency dispositions.*

* The combinations listed are those with 5 or more no clemency dispositions, accounting for 25% or more of all case dispositions for a particular factor combination.

Military No Clemency Cases

Agg Factors	Mit Factors	# of cases	# No Clemency
1,5,8	-	18	9
18	6	29	14
1,5,8,9	1	14	6
1,8	-	13	5
1,5,8,9	26	18	7
1,8	1,6,11	18	6
1,5,8	6	34	10
1,5,8,9	6	38	11

From our sample, the military applicants most likely to be denied clemency were black (14%)* or of other minority backgrounds (11%), born after 1949 (11%), with AFQT scores in Category III (10%) or Category IV (9%), who had less than 12 months creditable service (11%) and a partial tour in Vietnam (13%), whose AWOL resulted either from post-combat psychological problems (12%) or any reason unrelated to opposition to war or personal/family problems (11%), who fled to a foreign country while AWOL (23%) before being apprehended (10%), who faced non-AWOL charges at the time of his discharge (14%), who has committed non-violent felony offense (24%) or violent felony offenses (73%), who was incarcerated at the time of his clemency application (61%), and whose records were incomplete when our case attorney prepared his summary (12%).

Applicants relatively unlikely to be denied clemency were born before 1945 (4%), college-educated (0%), with an AFQT score of Category I (5%),

* The mean no clemency percentage in our sample was 8.2%, slightly higher than the 6.3% no clemency percentage for all Board cases.

who was drafted (6%), who had more than two years (4%) or three years creditable service (3%) with one full Vietnam tour (6%) or multiple Vietnam tours (0%), whose AWOL offense resulted from conscientious objection to war (3%), who lived openly at home while AWOL (3%) before surrendering (6%), who did not face non-AWOL charges at the time of his discharge (6%), who has committed no civilian felony offenses (3%), who was in school (0%) or underemployed (0%) at the time of his clemency application, and whose lawyer communicated with our case attorney while his clemency application was pending (0%).

Two-thirds of our military no clemency dispositions were attributable to our applicants' convictions for violent felony offenses. The following cases are typical.

No clemency dispositions normally resulted from other serious felony convictions, such as the following.

(Case #10147) While in the service, applicant received a General Court Martial for robbery with force. After his discharge, he was arrested and found guilty of armed robbery in Michigan.

(Case #04071) Applicant is now serving a 15-year sentence in a civilian prison for selling heroin

(Case #14930) After discharge, applicant was convicted in a civilian court of first degree murder and second degree robbery. He received a sentence of 25 years to life and will not be eligible for parole until 1997.

Occasionally, we would deny clemency when the applicant committed his offense out of cowardice, as in the following.

(Case #03304) Applicant would not go into the field with his unit, because he felt the new Commanding Officer of his company was incompetent. He was getting nervous about going out on an operation; there was evidence that everyone believed there was a good likelihood of enemy contact. (His company was subequently dropped onto a hill where they engaged the enemy in combat). He asked to remain in the rear, but his request was denied. Consequently he left the company area because, in the words of his chaplain, the threat of death caused him to exercise his right of self-preservation. Applicant was apprehended while travelling on a truck away from his unit without any of his combat gear.

We also denied clemency if offenses were simply too serious and plentiful to excuse.

(Case #00[illegible])

Applicant received an SCM for two periods of AWOL (one day each) and one charge of missing movement. He then received an NJP for one AWOL (one day), another NJP for three AWOL's (1; 1; 10 days), and one NJP for two AWOL's (7; 1 days). He then received an SPCM for two AWOL's (2 months 17 days; 3 months 19 days). He accepted an undesirable discharge in lieu of court martial for one period of desertion (2 yrs., 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 month 2 days; 2 months 13 days; 6 months 29 days) and one period of non-qualifying AWOL (3 months 28 days). This is a total of one period of desertion, 15 periods of qualifying AWOL and one non-qualifying AWOL (total of 5 years).

Not all decisions to grant outright pardons or deny clemency were as clear as the above examples. Nor were they all unanimous. Sharp disagreement occasionally arose over cases which had very strong mitigating and aggravating factors. Consider the following case:

(Case #17562) Applicant's records were lost or destroyed and have been only partially reconstructed. The reconstructed records cover only the past several years, not describing the three years which applicant claimed that he spent in Vietnam as a rifleman and armored personnel carrier driver. They do not cover the period of his alleged leg wounds, Purple Heart, and Bronze Star. However, they do show that he was discharged in lieu of court-martial because of nine AWOL incidents in Vietnam, six of which were for durations of longer than one month. Neither applicant nor his records indicate the reasons or circumstances of his AWOL offenses, although almost all of them occurred after his alleged combat wounds. Applicant claims that he is now disabled and has required hospitalization for his leg wounds. He is presently unemployed.

In the above case, the applicant went AWOL numerous times in Vietnam, probably combat zones. However, he claims to be disabled, and his AWOLS may have been related to his serious wounds. His records are incomplete through no fault of his own, so the full story cannot be known. Our full Board was sharply split, some for an outright pardon and others for no clemency. By a close vote, our final recommendation to the President was for an outright pardon.

E. Comparison with Case Dispositions for the Other Programs

Our applicants -- military and civilian -- had already paid a price before they applied for clemency. Roughly half had been incarcerated, most for several months. Many had performed alternative service as a condition of probation. Our baseline formula took this into account.

As a result, our case dispositions were naturally different from those of the Justice and Defense Department programs. Their applicants had never paid any price (other than the hardship of being a fugitive -- a factor which no clemency program should weigh in its calculations). At the same time, we were the only part of the President's program to grant clemency selectively. Neither the Justice Department nor the Defense Department denied clemency to any eligible applicant. The tables below show the alternative service assignments of the other two parts of the President's clemency program.

DOJ PROGRAM

Average Alternative Service by Circuit

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

WRONG CHART

Comparing their case dispositions to ours can be misleading, unless prior punishments are taken into account. When our military applicants' time in jail (average: 2½ months) is taken into account according to our baseline formula--which gives three months credit for every one month in jail -- the comparison changes. Our case dispositions are still shown to be somewhat more generous than Defense's but not by as much as a straight-line comparison would indicate.*

COMPARISON OF PCB AND DOD CASE DISPOSITIONS

Disposition	DOD Cumulative %	Unadjusted PCB Cumulative %	Adjusted PCB Cumulative %
Pardon	0	41	0
1-5 mos	2	66	0
6-12 mos	15	28	66
13-18 mos	22	0	28
19-24 mos.	100	0	0
25+ mos	-	0	0
No Clemency	-	6	6

Likewise, compare our program with that of the Department of Justice. Our civilian applicants have served an average of 4 months in jail and 5 months of prior alternative service. When our baseline calculation is applied, our dispositions are shown to have been more severe than those of the Department of Justice**

COMPARISON OF PCB AND DOJ CASE DISPOSITIONS

Disposition	DOJ Cumulative Percent	Unadjusted PCB Cumulative %	Adjusted PCB Cumulative Percent
Pardon	0	83	0
1-5 mos.	2	10	0
6-12 mos.	13	6	0
13-18 mos.	36	0	0
19-24 mos.	100	0	0
25+ mos	-	0	99
No Clemency	-	1	1

CHAPTER IV: OUR APPLICANTS

A. INTRODUCTION

Our Applicants

A. Introduction

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Only 9% of all draft-age men served there. Less than 2% ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred---were convicted or still remain charged with these offenses. By contrast, 60% of all draft-age men were never called upon to serve their country. _/

War and conscription are, by nature, selective and inequitable. In a sense, our applicants were victims of misfortune as much as they were guilty of willful offenses. Most other young Americans did not have to face the terrible choices which they did. For this reason alone, applicants to the President's clemency program deserve the compassion of their fellow countrymen.

As we decided cases, we came to understand better the kinds of people who had applied for clemency. By the time our Board had reviewed all cases, each of us had read approximately 4,000 case summaries for our respective panels. From these case summaries, we learned what our applicant's family backgrounds were like, what experiences they had with the draft and the military, why they committed their offenses, and what punishments they endured.

_/ These percentages are drawn from a comparison of data from the Statistical Abstract of the United States, Official Department of Defense Records (See _____), and Official Department of Justice Records (See_____).

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

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

In this chapter, we describe our civilian and military applicants. Who were they? What did they do? Why did they do it? Our actual cases tell much of the story, supplemented by the results of a comprehensive survey we conducted from the case summaries of almost 1,500 applicants. In our conclusion, we try to identify who did not apply, why they did not, and what happens to them now.

As we describe the circumstances and experiences of our applicants, we are doing so only from the perspective of the 16,000 cases we read and decided. These were individuals with whom the military or the draft system had to judge on the basis of much more information and different standards than we did. Our mission was clemency; theirs was the enforcement of Federal Law and military discipline.

The allegations of our applicants -- and our decisions granting them clemency -- should not be used to infer any improper actions on the part of draft boards, courts, or the military. They all did their duty during the Vietnam era, as set forth by the President, the Congress, and the Supreme Court. It was not our Board's intent to undermine the effectiveness of those institutions to carry out their legitimate functions in peace and war. The effect of this report should not be disruptive of America's future ability to enforce conscription and military discipline.

CHAPTER IV B: OUR CIVILIAN APPLICANTS

Chapter IV-B: Our Civilian Applicants

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

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

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

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*Unless otherwise noted, all statistics about our applicants came from our own survey of approximately 500 civilin applicants.

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

Illustrating the discussion are excerpts from our case summaries. The cases described cover a broad range of fact circumstances;many of the applicants received outright pardons, some were assigned alternative service, and a few were denied clemency.* Much of the information in these summaries is based upon the applicants' own allegations, sometimes without corroboration. In the spirit of the clemency program, we usually accepted our applicant's claims at face value for the purposes of making dispositions in their cases. Our perspective was more limited than that of the local draft boards and the courts. Therefore, we urge the reader not to draw sweeping conclusions from the facts in any individual case.

With few exceptions, our statistics are based upon our sample of 472 civilian applicants - roughly one-fourth of our total number of civilian applications.**

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* See Chapters II-F and III for a discussion of how our Board applied fact circumstances to determine individual case dispositions.

**See Appendix for a description of our sampling techniques and a more detailed presentation of our findings.

Registration

Our applicants, like millions of young men, came into contact with the Selective Service System when they reached the age of 18 -- usually between 1956 and 1968. Often, it was their first direct contact with a government agency. A few (3%) of our applicants committed draft offenses by failing to register with the draft -- or failing to register on time. Ignorance or forgetfulness was no defense, but draft boards rarely issued complaints for failure to register unless an individual established a pattern of evasion.

(Case #00085) Applicant was convicted of failing to register for the draft. As a defense, he stated that he was an Italian immigrant who did not understand the English language. However, there were numerous false statements on his naturalization papers, and he was able to comply with state licensing laws as he developed several business enterprises in this country.

After registration, our applicants were required to keep their local board informed of their current address. Failure to do so was a draft offense, for which 10% of our applicants were convicted. These tended to be itinerant individuals with little education, who by background were unlikely to understand or pay due respect to their Selective Service responsibilities.

(Case #00964) Applicant's father, a chronic alcoholic, abused applicant and his mother when intoxicated. Applicant left his home to seek work, without success. Because of his unsteady employment, he was compelled to live with friends and was constantly changing addresses. His parents were unable to contact him regarding pertinent Selective Service materials. After his conviction for failing to keep his draft board informed of his address, applicant apologized for his "mental and emotional confusion," acknowledging that his failure to communicate with the local board was an "error of judgment on my part."

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

(Case #03151) Applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office, but he did not notify his local board. He mistakenly thought this action fulfilled his obligation to keep his local board informed of his current address.

(Case #00822) Applicant's mother telephoned his new address to the local board. Selective Service mail still failed to reach him, and he was convicted for failure to keep his board informed of his whereabouts. The last address his mother had given was correct, but the court did not accept his defense that mail did not reach him because his name was not on the mailbox.

Classification

Immediately after our applicants registered with the local board, they were given Selective Service classifications. There were a number of different kinds of deferments and exemptions for which our applicants applied to their local boards. Many of the 44% of our applicants who attended college received student deferments. Some applied for hardship deferments, occupational deferments, physical or mental exemptions, or ministerial exemptions (particularly the 21% of our applicants who were Jehovah's Witnesses). The greatest number applied for conscientious objector exemptions. Some applied for numerous deferments and exemptions with draft boards showing great patience in approving legitimate claims and offering full procedural rights even for claims that were obviously dilatory.

(Case #04550) Applicant had a student deferment from 1965 to 1969. He lost his deferment in 1969, apparently because of his slow progress in school (he did not graduate until 1973). His two appeals to keep his student deferment were denied. After passing his draft physical and having a third appeal denied, he applied for a conscientious objector exemption. This was denied, and his appeal was denied after a personal appearance before his state's draft board director. After losing another appeal to his local board, he was ordered to report for induction. One day after his reporting date, he applied for a hardship postponement because of his wife's pregnancy. He was granted a nine-month postponement. He then requested to perform civilian work in lieu of military service, but to no avail. After his wife gave birth, he fled to Canada with her and the child. He returned to the United States a year later, and was arrested.

Many of our applicants hired attorneys to help them submit classification requests and appeals. Others relied on the advice of local draft clerks. However, it was the responsibility of our applicants to make themselves aware of the legal rights available to them.

(Case #02290) Applicant made no attempt to seek a personal appearance before the local board or appeal their decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

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

(Case #00537) Applicant initially failed to fill out a form to request conscientious objector status because the religious orientation of the form led him to believe he would not qualify. After Welsh, he believed he might qualify under the expanded "moral and ethical" criteria, so he requested another form. When his local board sent him a form identical to the first one, he again failed to complete it, believing that he could not adequately express his beliefs on a form designed for members of organized religious.

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

(Case #03548) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification was an orthodox religious belief in a supreme being.

Some of our applicants' requests for deferments or exemptions were granted; others were denied. In case of denial, an individual could appeal his local board's decision to the state appeals board. A few of our applicants claimed that local board procedures made appeals difficult, but it was their own responsibility to learn about their opportunities for appeal.

(Case #00596) Applicant claimed that he was given no reasons for the denial of his claim for conscientious objector status. Consequently, he said that he was unaware of how or where to appeal his case to a higher level.

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

(Case #02317) Applicant, a Jehovah's Witness, was unaware of the time limitations on filing notices of appeal. He continued to gather evidence for his appeal, but it was ultimately denied on the procedural grounds of his failure to make timely application for appeal.

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

(Case #04296) Applicant failed to appeal his local board's denial of his conscientious objector claim, which he claimed was done without giving any reasons for the denial. Although his trial judge indicated that the local board's action was improper, he nevertheless approved a conviction because applicant had failed to exhaust his administrative remedies by appealing his local board's decision.

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

(Case #02317) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim for reclassification. Despite this rehearing, his local board found the evidence insufficient to merit a reopening of his case. Without a formal reopening, applicant could not appeal his board's findings upon rehearing.

Our applicants applied these procedural rights in their requests for all types of deferments and exemptions. Some of their claims appeared to be contorted efforts to avoid induction.

(Case #01121) Applicant claimed that his wife, who had been under psychiatric care, began to suffer hallucinations when he received his induction notice. He requested a hardship deferment, with two psychiatrists claiming that he should not be separated from his "borderline psychotic" wife. This request was denied. Applicant later tried to get a physical exemption by having braces fitted on his teeth. However, he instead was convicted of conspiring to avoid induction. (His dentist also faced charges, but fled to Mexico to escape trial. He applied to our Board for clemency, but we did not have jurisdiction over his case.)

(Case #01068) Applicant instructed his draft board that he had a weak back and weak knees. The physician who examined him refused to verify this. Applicant then forged the physician's name and returned the document to his draft board.

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

(Case #10792) Applicant's father was deceased, and his mother was disabled and suffered from sickle cell anemia. His request for a hardship deferment was denied. Also, applicant claimed that he suffered from a back injury. This allegation was supported by civilian doctors, but denied by military doctors.

(Case #11758) Applicant's parents were divorced when he was 16, with his father committed to a mental institution. Applicant dropped out of school to support his mother. A psychiatrist found applicant to suffer from claustrophobia, which would led to severe depression or paranoid psychosis if he entered the military. However, he did not receive a psychiatric exemption.

The classification of greatest concern to most of our civilian applicants was the conscientious objector exemption. We have evidence that almost half (44%) took some initiative to obtain a "CO" exemption.

Twelve percent of our applicants were granted CO status, 17% applied but were denied, and the remaining 15% never actually completed a CO application.

Of the 56% of our applicants who took no initiative to obtain CO status, roughly half (25%) committed their draft offenses for reasons unrelated to their opposition to war. Others may not have filed for a CO exemption because they were unaware of the availability of the exemption, knew that current (pre-Welsh) CO criteria excluded them, or simply refused to cooperate with the draft system.

(Case #10768) Applicant, a Jehovah's Witness, had his claim for a ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and ordered to report for induction. (He complied with his draft order, but he later went AWOL and received an Undesirable Discharge.)

(Case #01213) Applicant did not submit a CO application because it was his understanding that current (pre-Welsh) CO rules required that he be associated with a widely recognized pacifist religion. His refusal to participate in war stemmed from his personal beliefs and general religious feelings.

(Case #03506) Applicant, a Jehovah's Witness, refused to file for CO status because he felt that by so doing he would be compromising his religious principles, since he would be required by his draft board to perform alternative service work.

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

(Case #00803) Applicant filed a CO claim in 1969, after he received his order to report for induction. His draft board postponed his induction date and offered him a hearing. However, applicant did not come to his hearing and advised his draft board that he no longer desired CO status. He stated at trial that he decided not to apply for a CO exemption because the law excluded political, sociological, or philosophical views from the "religious training and beliefs" necessary for CO status at the time.

Some did not pursue a CO exemption because of their inability to qualify under pre-Welsh rules. Occasionally, applicants claimed that they had been discouraged from applying. However, it was their responsibility to make further inquiry about their legal rights.

(Case #00803) In reply to applicant's request for a CO application form, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, he did not bother to return the form.

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

(Case #12828) Applicant wished to apply for CO status, but his form was submitted late and was not accepted by his local board. His lawyer had lost his application form in the process of redecorating his office.

(Case #00014) Applicant applied for CO status after his student deferment had expired. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Consequently, his local board refused to consider his CO application.

In the midst of the Vietnam War, the substantive law regarding conscientious objectors changed dramatically, profoundly affecting the ability of a great number of our applicants to submit C.O. claims with any reasonable chance of success. In June 1970 the Supreme Court clarified conscientious objection in Welsh v. United States, supra, stating that this exemption should be extended to cover those whose conscientious objection stemmed from a secular belief. Section 6(j) was held to exempt from military service those persons who consciences, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument or war. In the later case of Clay v. U.S. ( ), the court stated the three requirements for CO classification as: (1) It must be opposition to war in any form; (2) the basis of opposition to war must be moral, ethical, or religious; and (3) the beliefs must be sincere.

Why then, did so few of our applicants apply for CO status? Twenty-three percent of our applicants claimed that they committed their offense primarily because of ethical or moral opposition to all war -- and 33% said they committed their offense at least partly

because of such ethical or moral feelings. However, [redacted] 11% took any initiative to obtain a CO exemption, and 8% filed for CO status. [redacted] 0.2% were successful.

Ninety percent of our applicants registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many of our applicants passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and 35% committed their draft offense before the decision. However, only 13% were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but twice that proportion (26%) pled guilty to their charges.

Two explanations are the most persuasive in explaining why more of our applicants did not apply for (or qualify for) a CO exemption. A great many apparently did not understand what Selective Service rules were or what defenses could be raised at trial. Many others objected not to war in general, but to the Vietnam War alone. These "specific war" objectors could not qualify for a CO exemption even under the post-Welsh guidelines.

(Case #02320) Applicant failed to submit a CO application after allegedly being told by his local board that only members of certain religious sects were eligible. This occurred after the Welsh decision.

(Case #02338) Applicant's claim for conscientious objector status was denied by his local board because he objected only to the Vietnam War, rather than all wars.

It did not appear that the CO application form, discouraged CO applications;

28% of those with college degrees applied for CO status, versus 19% of those with less education. Our less-educated applicants were successful in 53% of their CO claims, while those with college degrees were successful in only 14% of their CO claims. This may be attributable to the fact that those with less education more often based their claims on religious, rather than moral or ethical, grounds.

Finally, some of our applicants claimed that they were denied CO status because / it is claimed that some local boards applied pre-Welsh rules to their post-Welsh CO claims. Of our civilian applicants who raised post-Welsh "moral and ethical" CO claims, only 10% were successful. By contrast, CO applicants who claimed to be members of pacifist religions enjoyed a 56% success rate before and after Welsh. However, many may have failed to meet the post-Welsh requirements Local Boards made their determinations on the basis of the Full record available to them.

(Case #01373) Applicant's request for conscientious objector status was denied, partially on the basis that he had no particular religious training or experience to establish opposition to war. This determination was made after Welsh ruled that such formal religious training was not a prerequisite to conscientious objector status.

Alternative Service for Conscientious Objectors

Approximately one-eighth of our civilian applicants did receive CO exemptions. Rather than face induction into the military, they were assigned to 24 months of alternative service in the national interest. However, they refused to perform alternative service and were subsequently convicted of that offense.

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

(Case #10761) Applicant was ordered to perform alternative service work at a Soldier's Home for less than the minimum wage. The Soldier's Home was fifty miles away from his residence, and he had no car. Applicant claimed that it was impossible to commute to the Soldier's Home without a car, and that even if he could, he would be unable to support his wife and child on that salary. Not knowing what legal recourses were available to him, he simply did not do the work, although he was willing to perform alternative service.

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

(Case #00560) Applicant refused to perform alternative service as a protest against the war in Vietnam.

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

(Case #02336) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System, on the grounds that even this attenuated participation in the war effort would violate his

religious beliefs. He did indicate that he would be willing to perform similar services under the court's order of probation. Rather than accept this distinction, the judge sentenced the applicant to prison for failure to perform alternative service.

The Induction Order

Those who were not granted CO exemptions were reclassified 1-A after their other classifications had expired. Their induction orders may have been postponed by appeals or short-term hardship, but eventually they -- like almost two million other young men during the Vietnam War -- were ordered to report for induction. Only 4% of our applicants failed to report for their pre-induction physical examination. It was not until the date of induction, after complying with regulations to the fullest extent, that 70% of our applicants violated the Selective Service lawy. In fact, of those applicants who received orders to report for induction, nearly half (32% of all applicants) actually appeared at the induction center. When the time came to take the symbolic step forward, these applicants refused to participate further in the induction process.

Once the induction order had been issued and all postponements had been exhausted, our applicants had a continuing duty to report for induction. It was often the practice of local boards to issue several induction orders before filing a complaint with the United States Attorney, giving our applicants every opportunity to comply.

(Case #00623) Applicant was ordered to report for induction, but he instead applied for CO status. His local board refused to reopen his classification, and he was again ordered to report for induction. He again failed to report, advising his draft board after-the-fact that he had been ill. He received a third order to report, but again did not appear. Thereafter, he was convicted.

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

(Case #00032) While applicant was attending an out-of-state university, his mother received some letters from his draft board. Rather than forward them to him, she returned them to the board. Her husband had recently died, and she feared losing her son to the service. Subsequently, applicant was charged with a draft offense.

(Case #00853) Having been classified 1-A, applicant informed his draft board that he was moving out of town to hold a job, giving them his new address. After reaching his new address, he found that his job was not to his liking. He then returned home, and he told his draft board that he was back not long thereafter. However, in the interim an induction order had been sent to his new address, he had not appeared on his induction date, and a complaint had been issued.

Sometimes, personal problems hindered our applicants from appearing as ordered at an induction center.

(Case #00061) Applicant failed to report to his pre-induction physical because he was hospitalized as a result of stab wounds. He was again ordered to report, but he did not appear because he was in jail. He was ordered to report for a third time, but applicant claimed he failed to report because of his heroin addiction. Therefore, he was convicted for his draft offense.

Many of our applicants claimed that the realization that they were conscientiously opposed to war came only after they received an induction notice. This notice may have acted as the catalyst which led to a late

crystallization of an applicant's beliefs.

(Case #3099) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

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

The Draft Offense:

To be eligible for clemency, our applicants must have committed at least one of six offenses enumerated in the Executive Order. These offenses include the failure to register (or register on time), failure to report changes in status (primarily changes in address), failure to report for pre-induction physical examination, failure to report for induction, failure to submit to induction, and failure to perform alternative service employment. The Clemency Board could not consider applications of those who had only been convicted of other violations of the Selective Service Act, such as making false statements regarding a draft classification; aiding and abetting another to refuse or evade registration or requirements of the Selective Service Act; forging, destroying or mutilating Selective Service documents such as draft cards or other official certificates; or failing to carry a draft card or carrying a false draft card. However, the vast majority of the Selective Service offenses committed during 1964 - 74 fell within the eligibility requirements for the Clemency Program. __/

As described earlier, 3% failed to register, 10% failed to keep their local boards informed of their address, 13% failed to perform alternative service as conscientious objectors, 4% failed to report for pre-induction physical exams, 38% failed to report for induction, and 32% failed to submit to induction. At the time of our typical applicant's draft violation, he was between the ages of 20 and 22, and the year was 1970 - 1972. For over 95% of these applicants, their failure to comply with the Selective Service law was their first offense.

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

offenses for reasons related to their opposition to war. Likewise, expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in 73% of our cases.

(Case #05677) Applicant had participated in anti-war demonstrations before resisting induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner".

(Case #16975) Applicant applied for conscientious objector status on the ground that "inasmuch as he was a Black that he could not serve in the Armed Forces of a nation whose laws and customs did not afford him the same opportunities and protection afforded to white citizens". His application was denied, and he refused induction.

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

Other major reasons for their offenses include medical problems (6%) and family or personal problems (10%). In evaluating these reasons, we found that these problems were mitigating in nearly all of the cases in which our applicants raised them.

(Case #04069) When applicant was ordered to report for induction, his wife was undergoing numerous kidney operations, with a terminal medical prognosis. She was dependent upon him for support and care, so he failed to report for induction.

Experiences as a Fugitive:

At one time or another, our applicants faced the difficult decision whether to submit to the legal process or become a fugitive. Nearly two-thirds of our applicants immediately surrendered themselves to the authorities. Of the remaining one-third who did not immediately surrender, the vast majority never left their hometown. Of the 18% of our applicants who left their hometowns to evade the

the draft, slightly less then half (8%) ever left the United States. Most of our at-large civilian applicants remained fugitives for less than one year. Many reconsidered their initial decision to flee. About one-third surrendered, and many of the rest were apprehended only because they lived openly at home and made no efforts to avoid arrest. Over two-thirds of our at large applicants were employed full-time; most others were employed part-time, and only one out of ten was unemployed. Only a small percentage assumed false identities or took steps to hide from authorities.

Most of our fugitive applicants who chose to go abroad went to Canada. Geographical proximity was one reason why some of our applicants chose Canada, and the similarity in culture, history, and language was another. However, the major reason for the emigration of American draft resisters to Canada was the openness of their immigration laws. Some of our applicants were either denied immigrant status or deported by Canadian officials. Otherwise, they might have remained there as fugitives.

(Case #04332) After receiving his order to report for induction, applicant went to Canada. He was denied immigrant status, so he returned to the United States and applied for a hardship deferment. After a hearing, his deferment was denied. He was once again ordered to report for induction, but he instead fled to the British West Indies. He returned to Florida to make preparations to remain in the West Indies permanently, but he was apprehended.

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

(Case #01285) In response to Selective Service inquiries, applicant's parents notified their local board that their son was in Canada. However, they did not know his address. Applicant lived and worked in Canada for almost four years.

The only applicants for our program who remained permanently in Canada were those who fled after their conviction to escape punishment.

(Case #16975) Applicant was convicted for refusing induction, but remained free pending appeal. When his appeal failed, he fled to Canada. He remained in Canada until he applied for clemency.

Experience with the Judicial Process

Pre-trial actions. Our applicant began to face court action when his local draft board determined that sufficient evidence of a Selective Service violation existed to warrant the forwarding of his file to the United States attorney. After a complaint was filed and an indictment returned against our applicants, both the courts and the Justice Department determined whether further prosecution was warranted.

The courts dismissed many draft cases. Analysis of the number of cases and the dismissal rate during the years 1968 - 1974, reveals a continuous increase in both the number of cases and the dismissal rate (except for 1974). Through 1968, only about 25% of all cases resulted in dismissal. From 1969 through 1972, about 55% were dismissed -- and in 1973, over two-thirds were dismissed. __/

One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or a tendency to dismiss draft cases. As an example, the Northern District of California was known for its willingness to dismiss draft indictments on minor technicalities. Since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal. __/ At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern district. In 1970, its dismissal rate averaged 48.9 draft cases per 10,000 population compared to the national average of 14.1; the Central District of California closely followed with 43.1. Some of our applicants apparently "forum shopped" in California and other Western states; five percent received their convictions in the Ninth Circuits, even though their homes were elsewhere.

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

Convictions and Acquittals

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

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted. Assuming that all those acquitted pled not guilty, and assuming (by extrapolation) that 2300 (26%) of convicted draft offenders pled not guilty, it appears that an individual stood an 85% chance of acquittal if he pled not guilty. However, none of our applicants were among the 12,700 fortunate persons who were acquitted of draft charges.

Changing Supreme Court standards occurring after the offense but before trial often led to these acquittals. Of special importance was the 1970 Welsh case which broadened the conscientious objector exemption criteria to include ethical and moral objection to war.

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

(Case #03618) Applicant joined the National Guard and was released from the extended active duty eight months later. While in the National Guard reserves thereafter, he was referred to Selective Service for induction for failure to perform his reserve duties satisfactorily. He obeyed an order to report for induction, but claimed that he negotiated an agreement to settle his National Guard misunderstandings at the induction center. He pled not guilty of refusing to submit to induction, and he was convicted.

Apparently, his trial attorney failed to call several important defense witnesses who had been present at the induction center. Applicant's present attorney believes that his trial attorney represented him inadequately. After conviction but before execution of his sentence, applicant completed his National Guard service and received a discharge under honorable conditions.

Frequently, applicants were given the opportunity to enlist or submit to induction during their trials, as a means of escaping conviction. Sometimes, applicants claimed that they were caught in a "Catch 22" situation in which they could neither be inducted nor escape conviction for failing to be inducted.

(Case #04322) Ordered to report for induction, applicant refused to appear at the induction center. While charges were pending against him, he was informed that he could seek an in-service CO classification after entering the military. With this knowledge, he agreed to submit to induction, and the court gave him a 30-day continuance. He did seek induction, but ironically, he could not be inducted because he failed to pass his physical due to a hernia condition. When his continuance expired, he was convicted of failure to report for induction.

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

(Case #00739) An order to report for induction was mailed to applicant's parents, but he failed to report. Over one year later, applicant's attorney contacted the United States Attorney and indicated that applicant had severe psychiatric and other medical problems which would make him fail his pre-induction physical. In response, the United States Attorney offered applicant an opportunity to apply for enlistment and be disqualified. However, applicant could not be found, and a grand jury subsequently issued an indictment.

Our typical applicant was convicted at the age of 23, nearly two years after his initial offense. Less than one out of ten of our applicants appealed the conviction.

An analysis of conviction rates for draft offenses shows clear jurisdictional discrepancies. For instance, the Southern states had the highest propensity for conviction, with the Eastern states and California having the lowest. In 1972, there were 27 draft cases tried in Connecticut, with only one resulting in conviction.

In the Northern District of Alabama during the same period, 16 draft cases resulted in 12 convictions. These different convictions rates apparently occurred because of wide differences in attitude toward the draft violators. Regardless of the explanation, it is clear that these differences in treatment encouraged wide scale forum shopping by our applicants.

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

The Sentence

Only about one-third of our civilian applicants ever went to prison. The remainder were sentenced to probation and, usually, alternative service. A majority of our applicants -- 56% -- performed alternative service. Typically, they performed 24 or 36 months of alternative service, but some completed as much as 60 months. The jobs they performed were similar to those filled by conscientious objectors. However, they had to fulfill other conditions of probation.

(Case #3384) As a condition of probation, applicant worked full-time for good-will industries and a non-profit organization which provided jobs for disabled veterans. He received only a token salary.

(Case #1929) Applicant worked for three years for a local emergency housing committee as a condition of probation. Although he worked full-time, he did so as a volunteer.

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

(Case #14271) Convicted for a draft offense, applicant was sentenced to three years probation, with the condition that he perform civilian work in the national interest. About one year later, his sentence was revoked for a parole violation (absconding from supervision). He was again sentenced to three years probation, doing alternative service work. He did not seek such work and left town. A bench warrant was issued for his arrest. Applicant, still a fugitive, now resides in Canada.

Some were required, as a condition of probation, to enlist in military service. They suffered a felony conviction, served full enlistments in the military, and sometimes remained on probation after discharge. Curiously, one percent of our civilian applicants became Vietnam veterans.

(Case #04085) Applicant refused induction because of his moral beliefs. He was sentenced to three years imprisonment, suspended on the condition that he enlist in the military. Applicant

did enlist, serving a full tour of duty. He served as a noncombatant in Vietnam, earning a Bronze Star. Awarded an Honorable Discharge, he still had one year of probation to complete before his sentence was served.

Of our applicants sentenced to imprisonment, most served less than one year. Only 13% of our applicants spent more than one year in prison, and less than 1% were incarcerated for more than two years.

The sentencing provisions of the Military Selective Service Act of 1967 provided for jail terms ranging from zero to 5 years, giving judges almost unlimited sentencing discretion. The sentencing dispositions of the courts were inconsistent and widely varying, dependent to a great extent upon year of conviction, geography, race, and religion. In 1968, 74% of all convicted draft offenders were sentenced to prison, their average sentence was 37 months, and 13% received the maximum 5-year sentence. By 1974, only 22% were sentenced to prison, their average sentence was just 15 months, and no one received the maximum. Geographic variations were almost as striking: In 1968, almost one-third of those convicted in the southern-states 5th Circuit received the maximum 5-year prison sentence, contrasting with only 5% receiving the maximum in the eastern-states 2nd Circuit. During the early years of draft offense trials in 1968, of 33 convicted Selective Service violators in Oregon, 18 were put on probation, and only one was given a sentence over 3 years. In Southern Texas, of 16 violators, none were put on probation, 15 out of 16 received at least 3 years of 14 received the maximum 5-year sentence. 21/

Other sentencing variations occurred on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was

34 months, while for blacks and other minorities the average sentence was 45 months. This disparity decreased to a difference of slightly more than two months in 1974. While we did not perceive such a disparity as a general rule, some cases appeared to involve racial questions.

(Case #01457) Applicant belongs to the Black Muslim faith, whose religious principles prohibited him from submitting to induction. He has been actively involved in civil rights and other social movements in his region of the country. He was convicted for his draft offense and sentenced to 5 years imprisonment. Applicant stated that his case was tried with extreme prejudice. He spent 25 months in prison before being paroled.

Some religious inequities may also have occurred. For the years 1966 through 1969, incarcerated Jehovah's Witness received sentences averaging about 1 month longer than the average Selective Service violator . During this same period, religious objectors other than Jehovah's Witnesses received average sentences about 6 months shorter than the average violator.

Although a variety of sentencing procedures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving 1/3 of his term; or (2) an indeterminate sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before but not after 1/3 of the sentence had expired. Under the Youth Correction Act, the convicted defendant might be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervision might have lasted as long as six years. Bureau of

prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation cases. When it was applied, the six year maximum period of supervision was imposed in almost all cases.

Prison Experiences

One-third of our applicants received prison sentences and served time in Federal prison. Most served their time well, often as model prisoners.

(Case #10961) Applicant served eighteen months in Federal prison. His prison report indicated that he did good work as a cook and had "a very good attitude." The report noted no adjustment difficulties, no healthy problems, and no complaints.

However, some of our applicants experienced greater difficulty in adapting to prison life.

(Case #08067) Applicant, a Hare Krishna, was sentenced to a two-year prison term for a draft offense. Because of his religious convictions and dietary limitations, life in prison became intolerable for him. He escaped from Federal prison, surrendering three years later.

Although very rare, isolated instances of harsh treatment were claimed to have occurred.

(Case #1210) Applicant was arrested in Arizona and extradited to the Canal Zone for trial (the location of his local board). Prior to trial, he was confined for four months in an unairconditioned four by six foot cell in a hot jungle. Some evidence exists that the applicant was denied the full opportunity to post reasonable bail. At his trial the applicant was convicted and sentenced to an additional two months confinement. By the time of his release, the applicant's mental and physical health substantially deteriorated and he was confined in a mental hospital for several months. The applicant is still a subject of great concern.

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

(Case #0059) Applicant became addicted to herion while serving the prison sentence for his draft conviction. Unable to legitimately support his habit after he was released, he turned to criminal activities. He was later convicted of robbery, and returned to prison.

The parole grant rates for Selective Service violators, like all other prisoners, was determined categorically: it depended primarily on the nature

of their offense and not on individualized aspects of their personal history or their imprisonment. It was the policy of many parole boards that draft violators serve a minimum of two years for parity with military duty, but most Selective Service violators were released after their initial people application. Jehovah's Witnesses received first releases in nearly all instances. The majority of those serving prison sentences over one year were released on parole, whereas the great majority of those with prison sentences less than one year served until their normal expiration date. Most Selective Service violators were granted parole after serving approximately half their prison sentences. This is higher than the national average for all crimes, including rape and kidnapping. However, in each year from 1965 to 1974, Selective Service violators were granted parole more often than other federal criminals.[1]

Consequences of The Felony Conviction

A felony conviction had many grave reminfications for our applicants. The overwhelming majority of states construe a draft offense as a felony, denying our applicants the right to vote -- or, occasionally, just suspending it during confinement. Some of the consequences of felony conviction are less well known. In some states, for example, a felon lacks the capacity to sue, although he or his representative may be sued;[2] he may be unable to execute judically enforceable instruments or to serve as a court appointed judiciary;[3] he may be prohibited from participation in the judicial process as a witness or a juror.[4] A lesser known consequences of a felony conviction might be that he may even lose certain domestic rights, such as his right to exercise parental responsibility. For example, six states permit the adoption of an ex- convict's children without his consent.[5]

The principal disability arising from a felony conviction is usually its effect upon employment opportunities. This effect is widespread among wide-spread among employers. Often, this job discrimination is discrimination is reinforced by status. States license close to 4,000 occupations, with close to half requiring "good moral character" as a condition

to receiving the license; therefore, convicted felons are often barred from such occupations as accountant, architect, dry cleaner, and barber.—/

Case #1256) Applicant, a third year law student, was told he could not be admitted to the bar because of his draft conviction.

Even more severe restrictions exist in the public employment section.

Case #2448 Applicant graduated from college, but was unable to find work comparable to his education because of his draft conviction. He qualified for a job with the Post Office but was then informed that his draft conviction rendered him ineligible.

Case #1277 Applicant qualified for a teaching position, but the local board of education refused to hire him on the basis of his draft conviction. The Board later reversed its position at the urging of applicant's attorney and the local federal judge.

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