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C. Our Military Applicants

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

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

The President's clemency program included the 100,000 who had received Undesirable, Bad Conduct, or Dishonorable Discharges -- plus the 10,115 who

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

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

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

In the discussion which follows, we trace the general experiences of our military applicants. With few exceptions, our statistics are based upon our sample of 1,009 military applicants to our program. Illustrating the discussion and excerpts of our own case summaries. It should be kept in mind that much of the information in these summaries are based upon the applicants' own allegations, sometimes without corroboration. In sequence, we look at the following:

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

1. Background

Our military applicants were raised in small towns or on farms (40%). Generally, they came from disadvantaged environments. Many (60%) grew up in a broken home struggling to cope with a low income (57%). A disproportionate percentage were black (21%) or Spanish-speaking (4%). Approximately 0.1% were women. Their average IQ was very close to the national average. Nonetheless, over three-quarters dropped out of high school before joining the service, while less than one-half of one percent graduated from college. Despite the

common belief that our applicants resisted the war, our applicants were not articulate, well-educated opponents of the war; almost none of them (0.2%) had applied for a conscientious objector draft classification before entering the military.

2. Induction or Enlistment in the Military

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

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

- (Case #00148) Applicant enlisted after high school because he did not want to go to college or be inducted into the Army.
- (Case #02483) Applicant enlisted to obtain specialized training to become a microwave technician.
- (Case #00179) Applicant enlisted at age 17 because he wanted a place to eat and a roof over his head.
- (Case #00664) Applicant enlisted because he was getting into trouble all the time and felt that service life might settle him down.

As the Vietnam war expanded America's military manpower needs, the pressures on recruiters became very intense. Many recruiters were helpful to our applicants by arranging entry into the preferred military occupational speciality and geographic area of assignment. However, the press for manpower led to occasional misunderstandings, which some of our applicants claimed were justifications for their unauthorized absences.

(Case #00356)

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

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

In August, 1966, Secretary of Defense, Robert McNamara announced Project 100,000 "to use the training establishment of the Armed Forces to help certain young men become more productive citizens when they return to civilian life." Like STEP, Project 100,000 offered the opportunity and obligation of military service to marginally qualified persons by reducing mental and medical standards governing eligibility. During its first year, 40,000 soldiers entered the military under this program. Thereafter, it lived up to its name by enabling 100,000 marginally qualified soldiers to join the service each year.

Military studies have indicated that the opportunity for technical training was the principal motivation for the enlistment of Category IV soldiers. However, over half enlisted at least partly because of the draft pressure. Other reasons for enlistment were to travel, obtain time to find out what to do with one's life, serve one's country, and enjoy educational benefits after leaving the service. Some did learn marketable skills: 13% of our applicants received a high school equivalency certificate while in the

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

service.

Almost one-third of our applicants (32%) were allowed to join the military despite pre-enlistment AFQT scores at or below the 30th percentile.

(Case #00847) Applicant had an AFQT of 11 and a GT (IQ score) of 61 at enlistment. He successfully completed basic training, but went AWOL shortly thereafter.

(Case #0229) Applicant had an 8th grade education, an AFQT of 11, and a GT of 62. From a broken home, he was enthusiastic about his induction into the Army, believing that he would have financial security and would receive technical training. His lack of physical ability and difficulties in reading and writing caused him to fail basic training. He was in Basic Training for nine months before he was sent to AIT as a tank driver. He continued to have learning problems in advanced training. According to applicant, this problem was compounded by the ridicule of his peers who discovered that he required several months to complete basic training.

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

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

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

We saw only the failures of Project 100,000 -- never its successes. The experiences of our 4,000 + Category IV applicants are not a fair reflection of the quarter-million men brought into the service by Project 100,000. Also, many of our Category IV applicants did serve well before committing their AWOL offenses.

(Case #5144)

Applicant, a Black male from a family of 12 children completed 11 years of school before his induction into the Army. His GT was 114 and his AFQT was 18 (Category IV). Applicant spent 6 years on active duty, including service as a military policeman in Korea. Following a three month stint in Germany, he served an 8 month tour in Vietnam as an assistant platoon leader. On a second tour in Vietnam, where he served as a squad leader and chief of an armored car section, he earned the Bronze Star for heroism. He departed AWOL while on leave from his second tour in Vietnam.

3. Early Experiences in the Military

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

(Case #02483) Applicant went on aimless wanderings prior to advanced training. He finally lost control of himself and knocked out 20 windows in the barracks with his bare hands, resulting in numerous wounds to himself.

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

(Case #0309) During boot camp, applicant, of Spanish heritage, was subjected to physical and verbal abuse. He recalls being called "chili bean" and "Mexican chili." His ineptness also made him the butt of his boot camp unit. He wept at his trial when he recalled his early experiences that led to his AWOL.

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

(Case #10125)

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

(Case #00704)

Applicant was a high school graduate with a Category I AFQT score and GT (IQ test) score of 145. She complained that other soldiers harrassed her without cause and accused her of homosexuality. She departed AWOL to avoid the pressure.

Incidents of AWOL during basic training usually resulted in minor forms of punishment. Typically, a new recruit would receive a non-judicial punishment resulting in restriction, loss of pay, or extra duty. Seven percent of our applicants were discharged because of an AWOL commencing during basic training. Following basic training, pressures on the average soldier with family or personal problems may have increased, incidental to a transfer to another unit for advanced or on the job training. Altogether, 10% of our applicants were discharged for an AWOL begun during advanced training. Individual transfers resulted in breaking up units and frequently intense personal friendships. The AWOL rate tended to be higher for soldiers "in transit" to new assignments. ✓

Many of our applicants were trained in jobs which they found unsatisfying, and others were given details which made no use of their newly-earned skills.

(Case #0649)

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

Military life, especially for those of low rank required the performance of temporary duties for which no training was required, such as kitchen patrol and area cleanups.

(Case #9488)

Applicant found himself pulling details and mowing grass rather than working in his military occupational speciality. He then went home and did not return for over three years.

After several months in military life, others were still having difficulty adjusting to the many demands of military life. A majority (52%) of our applicants were discharged for AWOL offenses occurring during stateside duty other than during training. As in civilian employment, a daily routine had to be followed, superiors had to be treated with respect, and orders had to be obeyed. The civilian's or service-member's failure to comply with these expectations could result in his being fired, with attendant loss of pay, promotability and status, or transfer. But the servicemen may have violated military custom or law which could lead to disciplinary action.

Altogether, over half (53%) of our applicants were punished for one or more military offenses other than AWOL which would not have been criminal offenses in civilian life. Only 3% were punished for military offenses comparable to civilian crimes (such as theft or vandalism).

(Case #14392) Applicant had difficulty adjusting to the regimentation of Army life. While he was in the service, he felt that he needed to have freedom of action at all times. He would not take guidance from anyone, was repeatedly disrespectful, and disobeyed numerous orders. His course of conduct resulted in his receiving three non-judicial punishments and three Special Court-Martials.

4. Requests for Leave, Reassignment, or Discharge

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

(Case #3289) During his 4 months and 19 days of creditable service, applicant was absent without official leave on five occasions. He was motivated in each instance by his concern for his grandmother who was now living alone and whom he believed needed his care and support.

The military had remedies for soldiers with these problems. They could request leave, reassignment (compassionate, or normal change of duty station), and, in extreme cases, discharge due to a hardship. Unit officers, chaplains, attorneys of the Judge Advocate General's Corps, and Red Cross workers were

there to render assistance within their means.

(Case #9491) Applicant requested, and was granted, an emergency leave due to his mothers death. Applicant did not return from leave. He was apprehended one year and 8 months later.

The Department of Defense discovered that 58% of its clemency applicants did seek help from at least one military source before going AWOL. However, only 45% approached their commanding officer, and fewer yet approached an officer above the Company level. Many applicants never tried to solve their problems through military channels. Other applicants indicated that they tried some of these channels but failed to obtain the desired relief.

(Case #1244) Applicant's wife was pregnant, in financial difficulties and being evicted; she suffered from an emotional disorder and nervous problems; his oldest child was asthmatic and an epileptic, having seizures that sometimes resulted in unconsciousness. Applicant requested transfer and a hardship discharge which were denied.

Request for leave were matters within the Commanding Officer's discretion. However, leave is earned at the rate of 30 days per calendar year, and individuals often used leave substantially in excess of the amount they had earned. Commanding Officers could not normally authorize "advance leave" in excess of 30 days, so a soldier who had used up his advance leave would have to go AWOL to solve his problems. This was especially true if the

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

(Case # 01336) While applicant was home on leave to get married, a hurricane flooded his mother-in-law's house, in which he and his newly wed wife were staying. Almost the entire property and his belongings were lost. He requested and was granted a 21-day leave extension, which he spent trying to repair the house. However, the house remained in an unliveable condition, and his wife began to suffer from a serious nervous condition. Applicant went AWOL for four days to ease the situation. He returned voluntarily and requested a Hardship Discharge or a six-month emergency leave, both of which were denied. He then went AWOL.

Of our applicants who requested leave or reassignment, roughly 15% had their request approved. A total of 1.3% of our applicants were granted leave or reassignment to help them solve the problem which led to their AWOL. By contrast, 8.6% had their leave or reassignment requests turned down.

(Case #74436) Applicant received information that his pregnant wife was in the hospital. She had fainted and fallen on the edge of a coffee table and had started bleeding internally. Applicant asked his commanding officer for permission to return home after informing him of his wife's difficulty and of the risk of a miscarriage. This request was denied, so he went AWOL.

The Hardship Discharge offered a more lasting solution to the conflict between a soldier's problem and his military obligations, without the stigma of most other administrative

separations. To get a Hardship Discharge, he had to submit a request in writing to his commanding officer, explaining the nature of his problem and how a discharge would help him solve it. The Red Cross was often asked for assistance in documenting the request. Higher headquarters was required to review the request and had the power to make final decisions, as required by service regulations.

(Case #0269)

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

The soldier who was conscientiously opposed to war could apply for in-service conscientious objector status. Very few of our applicants did: Only 1.1% took any initiative to obtain this in-service status, and only 0.5% made a formal application. However, our Board found 4.6% of our applicants to have committed their offenses for conscientious reasons. Some of our applicants were unaware of what they had to do to get such status.

(Case # 8129)

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

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

(Case #10402)

For a year-and-a-half after he was drafted, applicant tried to obtain conscientious objector status, because he did not believe in killing human beings. He is minimally articulate, but stated that even if someone was trying to kill him, he could not kill in return. He talked to his Captain and the Red Cross, neither of whom found his aversion to taking human life to be persuasive. When his application was denied and he was scheduled for Vietnam, he went AWOL.

After submitting his application, the soldier was interviewed by a chaplain and a military psychiatrist. The Chaplain had to comment on the sincerity and depth of the applicant's belief, and the psychiatrist evaluated him for mental disorders.

(Case#0472)

Three years after enlisting in the Navy, applicant made several attempts to be recognized as a conscientious objector. He spoke with chaplains, legal officers, doctors, and a psychiatrist. He told the psychiatrist of his opposition to the war in Vietnam and of his heavy drug use. Applicant claimed that the psychiatrist threw his records in his face and told him to get out of his office. He went AWOL after his experience with the psychiatrist.

The conscientious objector's next step was to present his case before a hearing officer, who in turn made a recommendation through the chain of command on his request. The final authority rested either with the general Court-Martial convening ^{authority or with the} administrative affairs office in the appropriate Service Department Headquarters.

5. Assignment to Vietnam

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

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

The other 27% did go to Vietnam. Once there, our applicants were less likely to desert. Roughly one in eight (3.4% of our applicants) deserted from Vietnam, and one-third of those went AWOL from non-combat situations. In many cases, their reasons related to personal problems, often of a medical nature.

(Case # 00423) Applicant was assigned to an infantry unit in Vietnam. During his combat service, he sustained an injury which caused his vision to blur in one eye. His vision steadily worsened, and he was referred to an evacuation hospital in DaNang for testing. A doctor's assistant told him that the eye doctor was fully booked and that he would have to report back to his unit and come back to the hospital in a couple of weeks. Frustrated by this rejection and fearful to his inability to function in an infantry unit, applicant went AWOL.

Many of our applicants who were sent to Vietnam were assigned to combat units. Some -- but not many -- actually deserted while serving in a combat assignment.

(Case # 3304) Applicant would not go into the field with his unit because he felt the new C.O. of his company was incompetent. He was getting nervous about going out on an operation in which the probability of enemy contact was high. (His company was subsequently dropped onto a hill where they engaged the enemy in combat). He asked to remain in the rear but his request was denied. Consequently, he left the company area because, in the words of his chaplain, "the threat of death caused him to exercise his right of self preservation." Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

Once a soldier arrived in Vietnam, he was less likely to go AWOL. However, he was permitted to return to the U.S. on emergency leave when appropriate. Also, he

was offered several days of "R&R" (Rest and Relaxation) at a location removed from combat zones, and frequently outside of Vietnam. It was on these sojourns outside of Vietnam that some of our applicants departed AWOL.

(Case # 4366) Applicant was granted emergency leave from Vietnam due to his father's impending death. Applicant failed to return from the leave.

Many of our applicants served with distinction in Vietnam. They fought hard and well, often displaying true heroism in the service of their country. Of our applicants who served in Vietnam, one in eight was wounded in action.

(Case # 2065) While in medic in Vietnam, applicant (an American Indian) received the Bronze Star for heroism because of his actions during a night sweep operation. When his platoon came under intense evening fire, he moved through a mine field under a hail of fire to aid his wounded comrades. While in Vietnam, he was made Squad Leader of nine men, seven of whom (including himself) were wounded in action. In addition to his Bronze Star, he received the Army Commendation Medal with Valor Device, the Vietnam Service Medal with devices, the Vietnam Campaign Medal, and the Combat Medic's Badge.

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

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

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

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

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

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

By contrast, combat experience for some applicants produced a sense of uneasiness about the cause for which they were fighting.

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

Our Vietnam Veteran applicants frequently articulated severe readjustment problems upon returning to the United States. This "combat fatigue" or "Vietnam syndrome" was partly the result of the incessant stress of life in combat. Our Board found that 6.4% of our applicants suffered from mental stress caused by combat.

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

Two-fifths of our Vietnam veteran applicants (11% of all military applicants)

claimed to have experienced severe personal problems as a result of their tour of duty. These problems were psychological, medical, legal, financial, or familial. One-third of their psychological and medical problems were permanent disabilities of some kind. They often complained that they had sought help, received none, and departed AWOL as a consequence.

(Case # 2065) (This is a continuation of the case of the American Indian who received a Bronz Star for heroism). After applicant's return to the United States from Vietnam, he asked his commanding officer for permission to see a chaplain and a psychiatrist. He claimed that he was denied these rights, so he decided to see his own doctor. He was given a psychological examination and was referred to a VA hospital. After a month of care, he was transferred back to camp. He again sought psychiatric care, but could find none. Later, he was admitted to an Army hospital. One examining psychiatrist noted that he needed prompt and fairly intensive short-term psychiatric care avert further complications of his was experience. His many offenses of AWOL were due to the fact that he felt a need for psychiatric treatment but was not receiving it.

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

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

Unfortunately, other soldiers who had never seen combat experience were sometimes unfriendly to our applicants who had, adding to the combat veteran's readjustment problems.

(Case # 8145) While in Vietnam, applicant saw much combat action and received numerous decorations. He was an infantryman and armor crewman who served as a squad and team leader. He participated in six combat campaigns, completed two tours in Vietnam, and received the Bronze Stars for heroism. In one battle, he was wounded -- and all his fellow soldiers were killed. His highest rank was staff sergeant (E-6). Upon his return from Vietnam, he went AWOL because

of harassment from fellow servicemen that he was only a "rice paddy NCO" who would not have ^{had} his rank if not for the war.

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

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

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

6. AWOL offenses:

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

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

The majority of our applicants - 90% - were convicted of AWOL.

AWOL was the easiest form of authorized absence to prove; where the evidence did not establish the intent element of desertion, a military court could still return a finding of AWOL.

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

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

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

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

(Case #03285)

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

*By coincidence, this 4.6% figure corresponds to the 4.6% of all cases in which our Board identified conscientious reasons (mitigating factor #10). It is very close to the 3.6% finding of an earlier AWOL study. ()

As additional 1.8% went AWOL to avoid serving combat, while another 9.7% left because they did not like the military. In rare cases, either may have implied an unarticulated opposition to the war. Thus, slightly more than 4.6% of our applicant's offenses may have fit a broad definition of conscientious objection.

(Case #1902) Applicant left high school at age 16 due to poor grades and disinterest. He was inducted, but after one week of Basic Combat Training, he left AWOL. Though he was not discharged until two years later, he only accumulated 18 days of creditable service.

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

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

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

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

Approximately thirteen per cent of our applicants left the military because of denied requests for hardship leave, broken promises for occupational assignments and improper enlistment practices, or other actions by their superiors which they might not have liked.

- (Case #0751) Applicant enlisted for the specific purpose of learning aircraft maintenance, but instead was ordered to Artillery school. When he talked with his commanding officer about this, he was told that the Army needed him more as a fighting man. He later went AWOL.
- (Case #4793) Applicant, a Marine Sergeant (E-5) with almost ten years of creditable service, requested an extension of his tour in Okinawa to permit him time to complete immigration paperwork for his Japanese wife and child. Several requests were denied. Upon return to the United States, he again requested time in the form of leave. He was unable to obtain leave for five months, until it was granted after he sought help from a Senator. Applicant relates that his First Sergeant warned him, before he left on leave, that "he was going to make it as hard for him as he could" when he returned, because he had sought the assistance of a senator.

Some may have committed their offenses because of their basic unfitness for military service at the time of their enlistment.

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

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

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

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

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

(Case #11835) Applicant indicated he went AWOL from leave which had been granted so he could see his wife and newborn child.

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

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

Some of our applicants offered bizarre excuses for their offenses.

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

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

Our applicants' first offense usually occurred between 1968-1970, and their last between 1969-71. Typically, their last AWOL was their longest, lasting seven months. One-fourth (25%) were AWOL for three months or less, and 27% were AWOL for over one year. Only 3% were AWOL for more than four years.

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

(Case #243) Applicant's military records reflect a series of unauthorized absences, the longest amounting to five years and five months, with only one month's creditable service.

At the time of their last AWOL, they had typically accumulated 14 months of creditable military service time; 81% had six months or more of creditable service, enough to qualify them for Veterans benefits. Only 1.1% used any force to effect their escape from the military.

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

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

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

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

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

Slightly over half (52%) of our applicants were arrested for their last AWOL offenses. Some efforts were made to apprehend AWOL soldiers, but those efforts were startlingly ineffective.*

* Normally, an AWOL offender's commanding officer sent a letter to his address of record within ten days of his absence. He also completed a form, "Deserter Wanted by the Armed Forces," which went to the military police, the FBI, and eventually the police in the soldier's home of record.

Either the local police never received bulletins about AWOL offenders, or they were unwilling to arrest them. We had countless applicants who lived openly at home for years until they surrendered or were apprehended by accident (for example, through a routine police check after running a red light). In some cases an applicant's family was not even notified of his AWOL status.

(Case #03697)

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

7. Experience with the Military Justice System

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

Most of our Army applicants who were AWOL for over thirty days were processed, upon their return to military control, through a Personnel Control Facility (PCF) formerly known as Special Processing Detachments. Life at these minimum - security facilities was not always easy for our applicants.

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

While in the PCF, our applicants were processed for administrative or court-martial action. Also, it was here that the decision was made, in appropriate cases, to place returning offenders in more secure pre-trial confinement. At the outset, they were briefed by a JAG officer (a military attorney) who advised them generally what disciplinary actions to expect. They were told about their opportunity to request a discharge in lieu of court-martial.

Some first offenders were quickly re-integrated into military life. Others faced more uncertainty about their fates. They had to decide, in most instances, whether to proceed to a trial or accept an administrative

discharge. The decision to go to trial usually carried the risks of conviction, a period of confinement, and perhaps a punitive discharge. On the other hand, a court-martial did not always lead to discharge: A convicted soldier might be returned to active duty and given an opportunity to serve out his enlistment (which would be extended by the time he was AWOL and in confinement). Even if a punitive discharge had been adjudged, a return to duty was frequently permitted if an individual demonstrated rehabilitative potential while confined. If no further problems developed, he would receive a discharge under honorable conditions, with entitlement to veterans' benefits. In fact, over half (54%) of the courts-martial faced by our applicants resulted in their return to their units.

(Case #11835) Applicant was convicted of 4 periods of AWOL totaling one year and two months. He had an exemplary record for valor in Vietnam. The convening authority suspended the punitive discharge adjudged by his court-martial. The discharge was reimposed, however, after he failed to return from leave granted him following his trial.

Our applicant's decision to accept an administrative discharge in lieu of trial amounted to a waiver of trial, a virtual admission of guilt, and often a discharge under less than honorable conditions. However, the administrative process was speedier, permitting rapid return home to solve personal problems. It also involved no risk of imprisonment. However, although he was avoiding a Federal criminal conviction, he did acquire a stigmatic discharge. He also lost his opportunity to defend charges against him. Thus, the choices for our applicants were very difficult.

If our applicant had established what his commander felt was a pattern of misconduct, the commander might decide that he was no longer fit for active duty.

(Case No. 4072) Applicant was discharged for unfitness due to frequent use of drugs, habitual shirking and repeated AWOL) and demonstrated inability to conform to acceptable standards of conduct.

The commander would then notify the soldier of his intention to discharge the soldier, who could choose to fight the action by demanding a Board of officers, or waive his right to such a Board. If he asked for the Board, the convening authority would then detail at least three officers to hear the evidence, as presented by the government, and as rebutted by the respondent and his assigned military defense counsel. The Board was then authorized to determine whether the soldier was either unfit or unsuitable for further military duty, if they believed he should be discharged. (They could also recommend his retention in the service). If they found the soldier unsuitable, the normal recommendation would be discharge under honorable conditions. A discharge under Honorable Conditions was also possible if unfitness were found, but the usual result in such a case was to recommend an undesirable discharge. Once the Board made its recommendations, the convening authority had to make a final decision.

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

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

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The more common administrative procedure, accounting for the discharge of 45% of our applicants, was the "For the Good of the Service" discharge, in lieu of court martial,* which was granted only at the request of a soldier facing trial for an offense for which a punitive discharge could be adjudged. Until recently, it did not require an admission of guilt -- but it did require that the AWOL offender waive his right to court-martial and acknowledge his willingness to accept the disabilities of a discharge under other than honorable conditions (e.g. Undesirable Discharge). Unlike our applicants, a few AWOL offenders received General Discharges through "Good of the Service" proceedings.

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

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

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

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

*This is commonly called the "Chapter 10" discharge within the Army, referring to AR 635-200 Chapter 10.

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

(Case #04977)

Applicant's last AWOL ended in a 30-day pre-discharge confinement, where he refused to sign a Article 15. He alleged that his First Sergeant told him that if he did not sign, he would be unable to see anyone about his problem. He further alleged that he was promised nothing more severe than a General Discharge, so he signed the papers. Instead he was given an Undesirable Discharge. Later, he appealed his discharge before the Army Discharge Review Board, but he was unsuccessful.

While it was a permissible practice in the Army prior to 1973 for an accused to condition his request for discharge in lieu of trial upon his being granted a General Discharge under honorable conditions, this was rarely granted. In order to speed the discharge application, many soldiers requested discharge, acknowledged that they might be given a UD, but requested that they be furnished a General Discharge in a separate statement. This may account for some misunderstanding by many applicants as to the discharge they would receive.

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

(Case #612)

Applicant wrote that he looked around for ways to deal with his personal pressures and finally decided to go AWOL.

(#612)cont'd

After three months living in a "hippie commune" he returned with the expectation he would be discharged. He obtained a discharge in lieu of court-martial.

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

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

	LENGTH OF AWOL		
	0-6 Months	7-12 Months	over 12 Months
UD - Discharge in Lieu of trial	50%	45%	36%
UD - Unfitness	21%	10%	7%
Punitive Discharge (court martial)	29%	45%	57%

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

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

There were three forms of court-martial. The Summary Court-Martial consisted of a hearing officer (Summary court officer) who called witnesses for the prosecution and defense, rendered a verdict, and adjudged sentence. The summary court adjudged no sentence greater than confinement at hard labor for one month (and then only if the accused was in pay grade E-4 and below), hard labor without confinement for 45 days, reduction to the lowest enlisted pay grade,^{*} and forfeiture of two-thirds of one month's pay. After 197_, no confinement could be adjudged unless the accused were represented by counsel, as a consequence of the ruling by the Supreme Court in Argisinger v. United States. No transcript of the trial was kept, and there was no judicial review. However, a summary court never sat in judgment without the express consent of the accused, who could refuse the court and leave to the convening authority the decision whether to refer the charges to a higher court. Altogether, 16% of our applicants faced a summary court-martial at least once.

*Soldiers in grade E-5 and above could be reduced only to the next inferior pay grade.

Altogether, 40% of our applicants stood court-martial for their last AWOL offense.* Of those, about 16% pled "not guilty." All were convicted, and all but a few received punitive discharges. They were further sentenced to pay forfeitures, reduction-in-rank, and imprisonment for typically seven months. Their sentences were often reduced through the automatic review of the Court of Military Review. Our court-martialed applicants' final sentences averaged five months, with only 3% having to serve more than one year in prison.

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

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

(Case #00423)

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

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

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

complete his military service successfully. However, many were habitual offenders. For others, military life became even more difficult after confinement.

(Case #356)

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

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

The 54% of our applicants who faced a Special Court were tried by a court of officers unless they specifically requested that at least one-third of the court be enlisted members. (Usually of high rank). After 1969, a military judge normally presided over the trial, and the accused was entitled to request that the military judge alone hear the case and adjudge sentence. In the absence of a military judge, the President of the court of members (the senior member) presided over the trial.

The Special Court could adjudge no sentence greater than confinement at hard labor for six months, two-thirds forfeiture of pay for six months, reduction to grade E-1, and a Bad Conduct Discharge. Of our applicants tried by a Special Court, 50% received a Bad Conduct Discharge. The other half were returned to their unit.

The 13% of our applicants who were tried by a General Court-Martial faced a possible sentence of up to 5 years imprisonment, a Dishonorable Discharge, and total forfeiture of pay and allowances. Of our applicants tried by a General Court, 99% were ordered discharged, almost all (85%) with a Bad Conduct Discharge.

The General Court was similar in composition and procedure to the Special Court. Our applicants facing Special or General were entitled to free JAG defense counsel after 1969. The service detailed defense counsel to them, and permitted them any counsel requested by name, provided the attorney was "reasonably available." They also could hire a civilian attorney, but at their own expense. The rules of evidence were followed and a verbatim record of trial was required if punitive discharge was adjudged.

* In the Army, a Bad Conduct Discharge was adjudged only where the convening authority expressly authorized the Special Court to adjudge a punitive discharge.

Effects of the Bad Discharge

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

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

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

* Before applicants could submit to any proceeding which might result in undesirable discharge, each was warned as follows:

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

** Stapp v Resor, 314 F. Supp. _____; accord Sofranoff v. U.S.; 165 Ct. Cl. 470, 478 (1964), Glidden v. U.S., 185 Ct. Cl. 515 (1968), Bland V. Connally, 293 F. 2d. 858 (___ Cir 1961)

CHAPTER IV: PCB APPLICANTS

D. Conclusion



D-Conclusion

An estimated 113,000 persons could have applied for clemency. Only 22,300 did apply. Who were the 90,000 who did not? Why did they fail to apply? What happens to hem now?

Who Were They?

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

<u>Clemency Program</u>	<u>Type of Applicants</u>	<u>Percentage of Non-Applicants</u>	<u>Total Number of Non-Applicants</u>
PCB	Military -UD	87%	56,600
PCB	Military-BCD/DD	78%	19,400
PCB	Convicted Civilians	77%	6,700
DOD	Military absentees	47%	3,800
DOJ	Fugitive civilians	84%	3,800
Total-----		80%	90,400

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

The Department of Defense had access to the military records of its eligible non-applicants. Using these records, it could make comparisons between its applicants and non-applicants. In most ways, they were alike -- family background, AFQT score education, type of offense, circumstances of offense, and so forth. Only a few clear differences could be found. Non-applicants committed their offenses earlier in the War, they were older,

and they were more likely to be married. This implies that many may not have applied because their lives are settled, with their discharges more a matter of past than present concern.

If the Department of Defense findings are correct --in other words, if non-applicants are not very different from applicants -- we can make some estimate as to how many draft resisters of deserters ever were Canadian exiles. In our program, 2% of our military applicants and 6% of our civilian applicants had at one time been Canadian exiles. In the Defense program, 2% had been Canadian exiles. Most of the Department of Justice applicants had been Canadian exiles, but no real data exists. Even assuming that all of the Justice applicants had been exiled, this indicates that only about 7,000 persons eligible for clemency had ever been Canadian exiles. This amounts to only 6% of all eligible individuals. However, there may have been thousands more who fled to avoid the draft, but for whom no indictments were ever issued.

At present, we estimate that about 4,000 persons are still Canadian exiles; most are those who declined to apply to the Department of Justice program. It is unlikely that many of them misunderstood their eligibility for clemency.

Throughout the Vietnam Era, there never had been any tally -- even a partial tally -- of the number of war-induced exiles. Some estimates were made, but they were based upon very imperfect counting methods. For example, figures of up to 100,000 were derived from the numbers of files on American emigrants at aid centers. Many emigrants were not draft resisters or deserters, and many had files at more than one center.

Why did they Fail to Apply?

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

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

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

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

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

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

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

What Happens to Them Now?

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

Military absentees still in fugitive status can surrender themselves to civilian or military authorities. They still face the possibility of court-martial, but it is possible that many will quickly receive Undesirable Discharges and be sent home.

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

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Revised Draft

Chapter VII: Conclusions



CHAPTER VII: CONCLUSIONS AND RECOMMENDATIONS

The President's Clemency Program was, very broadly speaking, an effort to heal some of the wounds of the Vietnam era. The Presidential Proclamation gave a clear mandate to our Board and to the Departments of Defense and Justice to achieve that objective.

Inescapably, we must ask whether the Clemency Program did in fact carry out the President's mandate. How successfully did we implement the spirit of each of the President's six principles?

- (1) The need for a program
- (2) Clemency, not amnesty
- (3) A limited, not universal, program
- (4) A program of definite, not indefinite length
- (5) A case-by-case, not blanket, approach
- (6) Conditional, not unconditional clemency

Earlier in this report, we have described what we and other agencies have done to implement these six principles. On the whole, we are confident that the program reflected the spirit of the Presidential Proclamation which created it.

E. The Need for a Program

As requested by the President, the designated agencies did develop a program which dealt directly with the issue of reconciliation for draft resisters and military deserters. Therefore, the public need for a Presidential response to this issue, very clearly felt just one year ago, now no longer exists. The President's Clemency Program is not the answer that many would have chosen, but it has been widely accepted as a compromise. A recent survey of public opinion conducted by the Gallup Organization in August, 1974, discovered that 47% of the American people approve of a conditional program such as President Ford's. (The others who offered opinions were almost equally divided between the 24% who thought he was too generous and the 18%

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The discussion of clemency or amnesty in the public forum has abated with surprising swiftness since the announcement of the program. It once was the constant subject of Congressional debate, newspaper editorials, and opinion polls. After the program started, discussion focused more on the details of the program than on the broader question of clemency versus amnesty. Today, the issue is virtually dormant. Whether this reflects positive acceptance, quiet acquiescence, or disinterest on the part of the public is a question which we cannot answer.

Part of the reasons for the diminished public interest in clemency may have been the low profile maintained by the other agencies and ourselves. We do wonder whether a higher profile might have led to an even greater public acceptance of the program. We believed, at first, that the same public which had shown such keen interest in the amnesty issue beforehand would be reasonably well informed about what was in the President's offer of clemency. During the late winter weeks, we tried to focus more public

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On balance, we consider the program's very low profile from September through January to have been a mistake. We believe that the program could have been very popular with the American public. It also could have reached more eligible persons. Despite this, the need for a program has been satisfied, and the American people seem reasonably content with the program which evolved. Along the way, some of the wounds of the Vietnam Era may well have been healed.

Finally, the President's clemency program was not--and should not be interpreted as--a denigration of the sacrifices of those who served honorably or lost loved ones in the Vietnam conflict. We are particularly concerned about the employment opportunities of the 2,500,000 veterans who served in Vietnam and feelings of the estimated 250,000 parents, wives, brothers, sisters, and children of soldiers who lost their lives in Vietnam. These are individuals deserving of our utmost respect. We are confident that the President's clemency program did them no harm; we are equally confident that a program of unconditional amnesty would have led many of these people to believe, in good conscience, that their sacrifices had been downgraded.

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Beyond question, applicants to the Department of Justice program received something of value. They are the only clemency recipients who will emerge with a clean record; once they complete their alternative service, their prosecutions will be dropped. Thus, their draft offenses should not affect their future opportunities to find jobs, housing and so fourth. However, their clean record comes at some risk. If a fugitive draft resister returned from Canada and enrolled in the Justice program, he must complete his alternative service. If he does not, he could be subject to immediate prosecution for his draft offense and would not be allowed to return to Canada if he so chose.

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Almost none of the applicants to the Presidential Clemency Board were fugitives, the rare exception being the civilian who fled to avoid punishment after his conviction. As a result, the major benefit of the other two programs -- putting

an end to one's fugitive status -- is of no consequence to our typical applicant. He had already settled his score with civilian or military authorities. He owed no Pardon, the highest symbolic Constitutional Act which the President could do on behalf of any of our applicants. Still, pardons result in no more than a partial restoration of an applicant's records and rights, blotting out neither the fact nor the record of conviction. Under present practice, no records are sealed. The benefits of a pardon lie in its restoration of the right to vote, hold office, hold trade licenses, and enjoy other rights described earlier. In a recent survey of employer attitudes, Dr. William Pearman found that 41% of national and local employers would discriminate against a convicted draft offender who performed alternative service and received a pardon, versus 75% who would discriminate against him if he did not receive clemency.—/ Local employers would discriminate against him much more than national employers.

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military record. Whether a Clemency Discharge plus a Presidential Pardon means more to employers than a Clemency Discharge standing alone is unclear; it is possible, perhaps even likely, that it adds nothing in tangible terms-- except where trade license restrictions are involved.

Critics of the President's program contend that a Clemency Discharge is at best worth nothing, since it is not a discharge under honorable conditions; and confers no veterans benefits. They further contend that it may be harmful, since it stigmatizes individuals as having committed AWOL or desertion offenses.—/

In his recent survey, Dr. William Pearman found that employers view Clemency Discharges as almost the equivalent of General Discharges.—/ If a job applicant with a Clemency Discharge earned it through alternative service, the percentage of employers who would discriminate against him (40%) is about the same as if he had a General Discharge (39%), and much less than if he had an Undesirable Discharge (75%).—/ The percentage of employers who would refuse to consider hiring him (6%) is not much larger than if he had a General Discharge (5%), and much less than if he had an Undesirable Discharge (34%).

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons given for not discriminating against them are his satisfaction of his national service obligation through alternative service, and the lack of any relationship between his desertion offenses and his potential performance on the job.

—/There is no truth to the further allegation that a clemency discharge disqualifies an individual from ever receiving veterans' benefits; it simply does not alone bestow benefits. Whatever appeal rights one had with an Undesirable or Bad Conduct Discharge, one still has with a Clemency Discharge.

National employers would discriminate against Clemency Discharges less often than local employers.

This study cannot be considered conclusive evidence of the worth of a Clemency Discharge, but it does indicate that there may be a reservoir of generosity and good will towards those who sought and earned clemency. If this is true, then applicants to the Defense program do receive something of value for performing alternative service. Still, their greatest benefit from applying for clemency, is the end they put to their fugitive status and to their chances of going to jail for their AWOL offenses.

However, we realize that most of our applicants were interested in more tangible benefits--especially veterans benefits. While we do not suggest that most of our applicants should have rejected these benefits, some of them were combat veterans. Others had injuries or disabilities resulting from their military service. It is not yet clear whether clemency recipients will be dealt with clemently by agencies which review their subsequent appeals for discharge upgrades or veterans benefits.

Beyond this, we are concerned that many of our applicants will not understand what they have received from the Clemency program. Staff conversations with applicants indicate that there are many applicants who do not understand our telegrams and letters describing their grants of clemency. Without face-to-face counseling, it is possible that many of them will never know what to write on employment application forms about their discharge. Many others may not realize that they can still apply to Discharge Review Boards for a discharge upgrade or to the Veterans Administration for veterans benefits.

Impact on Persons Not Receiving Clemency

It was a consistent principle of the President's Clemency Program that no one be coerced into applying for clemency--or made worse off as a result of having applied. To do otherwise would be neither clement nor fair. For this reason,

we are concerned about the impacts of the clemency program on those who did not apply, did not complete alternative service, or were denied clemency. The Clemency Program may have stimulated a greater public tolerance for everyone who committed draft or AWOL offenses during the Vietnam era. If so, those who did not receive clemency could benefit from the goodwill extended to those who did. We expect that this will be the case.

Of course, the reverse may be true: Individuals who could have applied for clemency but failed to do so (out of choice or ignorance) might face greater public disrespect than ever before. If an individual were eligible for but did not receive clemency, it is possible that adjudicative or administrative bodies will take adverse notice of that fact when dealing with that individual. For example, a military discharge review board might look with particular skepticism at an upgrade appeal of a person who might have applied for clemency, but did not. The Veterans Administration may do the same for former servicemen appealing for veterans benefits despite their bad discharge. Sentencing judges, law enforcement officials, licensing bodies, credit agencies, and others may likewise look askance at an eligible person's failure to receive clemency. With over 100,000 of the estimated 125,000 eligible persons not having applied for clemency, these possibly adverse impacts are of great significance.

We were the only clemency granting agency who denied clemency to some of our applicants (about 5%--or 800 cases). In making those case dispositions, we did not intend to leave those individuals in a worse position than before they applied. It is possible that those to whom we denied clemency--or who fail to complete alternative service--may be worse off than before they applied. Being denied clemency may be a personal embarrassment and, perhaps a stigma. We did not announce the names of those denied clemency, and we are concerned that the confidentiality of those individuals not be infringed upon by anyone else. We

are equally concerned about the confidentiality of those who fail to complete their alternative service.

Conditional, Not Unconditional Clemency

The qualities of mercy and forgiveness inherent in the President's program should not be interpreted as an admission that those who broke the law were correct. By creating the program, the President never intended to imply that the laws were wrong or that the clemency applicants were right. We believe that rights and responsibilities of citizenship are central to the theme of any meaningful clemency or amnesty program and any such program must be evaluated in terms of its reinforcement of those rights and responsibilities.

We realize that there is not now and may never be a national consensus on what a citizen's responsibilities are during time of war--especially if that citizen cannot support the war on religious or ethical grounds. We can only take a position on the subject in the same manner as any citizen (or group of citizens) might. We represent a cross-section of backgrounds, views, and personal interests, however, so our own consensus on this point may be of some interest.

We believe that when a citizen breaks a law he considers unjust, it is his responsibility to accept the designated punishment for his offense. Likewise, it is the responsibility of his government either to punish him or to change its laws, to prevent (or deterrent) impact of punishment is no longer important--in other words, once the unpopular war has ended--it is the government's further responsibility to temper its punishment with compassion and mercy. However, official forgiveness for an individual's failure to serve his country in time of war does not discharge him from his outstanding obligation of national service. Only in circumstances where an individual's punishment could be construed as a fulfillment of his obligations of national service do we believe that anyone can be officially "forgiven" without performing alternative service in the national interest.

Likewise, we consider it fair for the President to have conditioned his grants of clemency upon a good faith application from an eligible person. Executive clemency means more when it is an offer, not just a pre-emptory gift. The President, speaking for the American people, offered reconciliation. That reconciliation must

be mutual. If the 100,000 non-applicants were to have knowingly accepted his offer, this President--and, indeed, this country--would owe them nothing more. Our only concern about those who did not apply is that many have failed to realize in time they were eligible.

However, we believe that the conditions must have been reasonable for the program to have been fair. This means two things: First, applicants must have had a reasonable opportunity to fulfill the condition of application. They must have recognized their opportunity and obligation to apply. As described later, we have some doubts about whether many of our non-applicants did recognize such an opportunity. If this is true, the program's condition of application may have been fair in theory, but unfair in effect.

Second, applicants must have had a reasonable opportunity to fulfill the condition of alternative service. Understandably, the fulfillment of one's obligation of service should involve some personal sacrifices, but it need not entail hardship. The cause of national reconciliation is hardly served if an individual quits his job to do alternative service for three months, cannot regain his job afterwards, and has to go on welfare as a result.

Our applicants were typically assigned to 3 - 6 months of alternative service. We assigned such short periods in recognition that our applicants' obligation of national service had already been partially fulfilled, and we were asking only for an additional gesture of service. According to Selective Service, full-time alternative service jobs of such short duration are hard to find. Also, some of our applicants are reluctant to risk losing their current jobs through such a brief interruption. Over half of our applicants have wives, children, or others dependent upon them for financial support. In performing alternative service, we are concerned that many may complete their alternative service periods without doing any work -- because of their inability (and Selective Service's inability) to find appropriate work. Similarly, we are concerned that many others may be terminated from the program because of their

unwillingness to quit steady jobs for other work of such a short duration.

By recommending short periods of alternative service, it was not our intent to deny pardons to those individuals. If a sizeable proportion fail to complete alternative service, an important part of our Board's mission will also have failed.

A Limited, Not Universal, Program

On balance, we consider the scope of the program to have been quite generous. Rather than require a test of sincere opposition to the Vietnam War (which would have been unfair to people less able to articulate their views), the program was designed to include anyone whose offense may have involved opposition to the war or the military. Sixteen percent of the military applicants to our program and 81% of the applicants to the DOD program went AWOL out of opposition to the war or military, demonstrating the generosity of the program in defining eligibility. However, some categories of individuals remained ineligible despite the obvious relationship between their offenses and their opposition to the war. The clearest example of this was the serviceman who refused to obey an order to go to Vietnam. In his case, the military could have discharged him either for missing movement (qualifying him for clemency) or for disobeying orders (not qualifying him for clemency).

A Program of Definite, Not Indefinite, Length

The Clemency program was at first scheduled to accept applications for 4½ months. Because of a surge in our applications, two one month extensions were granted by the President. His apparent purpose of ending the program was to put the issue of clemency behind us as quickly as possible, so that we might also put the War behind us as quickly as possible.

Out of an estimated 123,000 persons eligible for clemency, only 22,500 actually applied to the three separate programs. This 18% application rate seems disappointing at first glance; however, for a program which accepted applications for only six months, that percentage is unusually large. To our knowledge, there has been no other Federal program which has drawn such a rapid response during its first six months. For example, HEW's Supplemental Income Security program, offering cash grants for low-income elderly persons, received applications from only 9% of its eligible target group during its first six months, and it took a full year for the program to match the clemency program's figure of 18%. This was true despite SIS's well-financed promotional campaign. Given the short time span and limited resources of our outreach efforts, we consider our application rate to be rather high. Unfortunately, we can take little solace from that fact. The SIS program is still accepting applications, but we are not.

We believed, at first, that those eligible for clemency would be well-educated, well-informed, and alert to a communications "pipeline" among themselves which would carry the news about the program. We also believed that veterans counselors would correctly advise former servicemen with bad discharges about their eligibility for the program. Both of these assumptions were wrong. A late December survey of twelve persons eligible for clemency showed that not one of them knew he could apply. In early January, the mother of a Vietnam Veteran with a bad discharge because of AWOL contacted General Lewis Walt of our Board to ask if the local Veterans Administration office had been correct when it told her that her son was not eligible for clemency.

Our Public Information campaign did not begin until mid-January, yet it stimulated a five-fold increase in applications before the month ended -- and over a twenty-fold increase before the second deadline extension expired at the end of March.

The application period was surely sufficient for those who knew from the start what the program offered them. They had ample time to make up their minds about applying. We suspect (but we cannot be sure) that virtually all of those eligible for the Department of Justice had such a sufficient period. However, it is our understanding that the number of applicants to the Department of Defense program was less than it might have been because of widespread misunderstandings about the fairness and decency of the procedures followed by the Clemency Processing Center at Fort Benjamin Harrison. Likewise, it is our firm belief that the small percentage of applications to the Presidential Clemency Board was attributable to the lack of public awareness of our eligibility criteria. The rising monthly tallies of new Board applications (800 through December, 4000 in January, 6000 in February, 10,000 in March) indicates that even more applications would have been received had our program (and Public Information campaign) continued. Informal Telephone Polls conducted by our staff found that even as late as March, 90% of our applicants had only learned of their eligibility within the past few days. Usually a news article or television announcement had been responsible for their application.

The degree to which the American public still misunderstands the President's program was illustrated by the recent Gallup poll. A substantial 72% of the American public had heard of the clemency program; 17% realized that it included fugitive draft resisters and deserters in the U.S., and 43% thought that it was for fugitive draft evaders and deserters in Canada and other countries. However, very few -- 15% -- understood that convicted draft offenders and discharged AWOL offenders could apply to the Board. Only 14% thought that a Vietnam Veteran discharged for a later AWOL could apply for clemency. It is worth noting that the

percentage of the public which understood our eligibility criteria corresponded almost exactly with the percentage of our eligible persons who applied by the March 31, deadline.

It is our firm conviction that many eligible persons did not apply because, even by the end of March they still did not know they could apply. As the Gallup poll indicated, they probably still do not know that the program was for them.*

*The Gallup Poll discovered that a slight plurality of Americans (48% versus 42%) do not favor a reopening of the President's program. However, the widespread misunderstanding about our eligibility criteria requires that a different perspective be taken of these results. In effect, ___% favor giving eligible persons a second chance to apply. We expect that a much greater percentage would favor giving un-informed eligible persons a first chance to make up their minds about applying.

A Case-By-Case, Not Blanket, Approach

Despite the wholly discretionary character of any grants of executive clemency, our program must be judged in terms of the fairness of our rules and the consistency with which we followed them. To be worthy of the respect and confidence of all citizens, we must have observed the basic principles of a fair legal process.

Questions of process arise primarily in any Clemency/Amnesty program which follows a case-by-case approach. Any blanket amnesty program would raise relatively few, if any, due process issues. The proper context for any discussion, therefore, is whether the President's program satisfactorily dealt with this extra burden. Absolute --- not comparative -- standards apply. Administrative requirements cannot be used as a justification for any short-cuts of due process.

At the Presidential Clemency Board, we have made every effort to apply fair rules and follow them with consistency. We occasionally had to modify our rules in mid-course, sometimes before corresponding changes could be made in our regulations. However, this was only done when it appeared that the rights and interests of our applicants would not be affected. The procedures which we imposed upon ourselves--quality control of casework, codification of policy precedents, the 30-day period for applicants to comment on their case summaries, and post audit of case dispositions--often--added time and administrative difficulty to our process, but we considered them essential to maintain the quality of our work. The seriousness with which we took our responsibilities was exemplified by our publication of an in-house professional journal, the Clemency Law Reporter. Our Board and staff of over 300 attorneys maintained a continuous dialogue about how our procedures were or were not consistent with due process; when changes were felt necessary, they were made. Ours was not a perfect process--it certainly was too time-consuming to suit us--but it was a reasonable one, carried out in good faith.

We consider our baseline formula, mitigating factors, and aggravating factors to have been fairly developed and fairly applied. Uniformly, they were developed through a clear process of Board consensus about what was relevant about the backgrounds of our applicants. Through the publication of policy precedents in the Clemency Law Reporter,

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we internally codified our policies. We applied them as consistently as could be expected, given the fact that all but a few hundred of our cases were decided in three-person Board panels.

On balance, the case by case approach offered us a means for making the right kind of clemency offer to each of our applicants. Without it, we might have been less generous with Vietnam veterans and persons who committed their offenses because of conscientious opposition to war. Likewise, we might have been more generous with those whose offenses resulted from irresponsibility, selfishness, or cowardice. This would have had the effect of demeaning the President's Constitutional pardoning powers.

Blanket amnesty would have treated all cases alike. This would have been fundamentally unfair -- to our applicants and to the American people. Consider the following two cases:

(Case # 09067) Applicant did not go AWOL until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the 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 three months of ending his first. He served as an infantry man in Vietnam, was wounded, and received the Bronze Star for Valor.

(Case #00206) Applicant met his wife, a Danish citizen, shortly after arriving in Germany on a military assignment. She became pregnant, and he went AWOL to marry her. After turning himself in, he was returned to Germany and placed in pretrial confinement. However, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests for theft and narcotics charges, received a sentence of 10 months imprisonment, and was deported to the United States.

Were the President to grant a Pardon to the second applicant, he would have cheapened the Pardon granted to the first. His friends and employers would have been more reluctant to acknowledge that he had earned his Pardon.

Likewise, the American people might have assumed that, since all applicants would have been treated alike, all applicants would have been alike. Many of the hard feelings generated during the Vietnam War resulted from such blanket judgments. By fostering such an attitude, blanket amnesty might have perpetuated -- and not healed -- the wounds of an era.

Revised Draft

Chapter VII: Conclusions



CHAPTER VII: CONCLUSIONS AND RECOMMENDATIONS

The President's Clemency Program was, very broadly speaking, an effort to heal some of the wounds of the Vietnam era. The Presidential Proclamation gave a clear mandate to our Board and to the Departments of Defense and Justice to achieve that objective.

Inescapably, we must ask whether the Clemency Program did in fact carry out the President's mandate. How successfully did we implement the spirit of each of the President's six principles?

- (1) The need for a program
- (2) Clemency, not amnesty
- (3) A limited, not universal, program
- (4) A program of definite, not indefinite length
- (5) A case-by-case, not blanket, approach
- (6) Conditional, not unconditional clemency

Earlier in this report, we have described what we and other agencies have done to implement these six principles. On the whole, we are confident that the program reflected the spirit of the Presidential Proclamation which created it.

E. The Need for a Program

As requested by the President, the designated agencies did develop a program which dealt directly with the issue of reconciliation for draft resisters and military deserters. Therefore, the public need for a Presidential response to this issue, very clearly felt just one year ago, now no longer exists. The President's Clemency Program is not the answer that many would have chosen, but it has been widely accepted as a compromise. A recent survey of public opinion conducted by the Gallup Organization in August, 1974, discovered that 47% of the American people approve of a conditional program such as President Ford's. (The others who offered opinions were almost equally divided between the 24% who thought he was too generous and the 18%

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Part of the reasons for the diminished public interest in clemency may have been the low profile maintained by the other agencies and ourselves. We do wonder whether a higher profile might have led to an even greater public acceptance of the program. We believed, at first, that the same public which had shown such keen interest in the amnesty issue beforehand would be reasonably well informed about what was in the President's offer of clemency. During the late winter weeks, we tried to focus more public

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A military applicant to the PCB receives a pardon as well as a Clemency Discharge. If he had any felony Court-Martial conviction, the pardon restores the same rights to him as to a civilian applicant with a Federal draft offense conviction. If he never had a felony Court-Martial conviction (for example, if he received an administrative discharge), the pardon neither restores rights nor immunizes him from further prosecution, since he already enjoys such an immunity by reasons of his discharge. The usefulness of the pardon is limited to its possible impact on military discharge review boards, courts, and other agencies which otherwise would be obligated to take note of his prior Court-Martial conviction and bad

—/The percentage who would discriminate against if he did no alternative service would be 57%.

—/The percentage who would refuse to consider hiring him if he did no alternative service would be 16%.

—/Dr. Pearman's Study is presented in full in Appendix _____. His findings on discrimination against Undesirable and General Discharges are corroborated by two other surveys on the subject. See _____.

—/The percentage who would discriminate him if he did no alternative service is 47%.

—/The percentage who would refuse to consider hiring him if he did no alternative service is 18%.

military record. Whether a Clemency Discharge plus a Presidential Pardon means more to employers than a Clemency Discharge standing alone is unclear; it is possible, perhaps even likely, that it adds nothing in tangible terms-- except where trade license restrictions are involved.

Critics of the President's program contend that a Clemency Discharge is at best worth nothing, since it is not a discharge under honorable conditions; and confers no veterans benefits. They further contend that it may be harmful, since it stigmatizes individuals as having committed AWOL or desertion offenses.—/

In his recent survey, Dr. William Pearman found that employers view Clemency Discharges as almost the equivalent of General Discharges.—/ If a job applicant with a Clemency Discharge earned it through alternative service, the percentage of employers who would discriminate against him (40%) is about the same as if he had a General Discharge (39%), and much less than if he had an Undesirable Discharge (75%).—/ The percentage of employers who would refuse to consider hiring him (6%) is not much larger than if he had a General Discharge (5%), and much less than if he had an Undesirable Discharge (34%).

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons given for not discriminating against them are his satisfaction of his national service obligation through alternative service, and the lack of any relationship between his desertion offenses and his potential performance on the job.

—/There is no truth to the further allegation that a clemency discharge disqualifies an individual from ever receiving veterans' benefits; it simply does not alone bestow benefits. Whatever appeal rights one had with an Undesirable or Bad Conduct Discharge, one still has with a Clemency Discharge.

National employers would discriminate against Clemency Discharges less often than local employers.

This study cannot be considered conclusive evidence of the worth of a Clemency Discharge, but it does indicate that there may be a reservoir of generosity and good will towards those who sought and earned clemency. If this is true, then applicants to the Defense program do receive something of value for performing alternative service. Still, their greatest benefit from applying for clemency, is the end they put to their fugitive status and to their chances of going to jail for their AWOL offenses.

However, we realize that most of our applicants were interested in more tangible benefits--especially veterans benefits. While we do not suggest that most of our applicants should have rejected these benefits, some of them were combat veterans. Others had injuries or disabilities resulting from their military service. It is not yet clear whether clemency recipients will be dealt with clemently by agencies which review their subsequent appeals for discharge upgrades or veterans benefits.

Beyond this, we are concerned that many of our applicants will not understand what they have received from the Clemency program. Staff conversations with applicants indicate that there are many applicants who do not understand our telegrams and letters describing their grants of clemency. Without face-to-face counseling, it is possible that many of them will never know what to write on employment application forms about their discharge. Many others may not realize that they can still apply to Discharge Review Boards for a discharge upgrade or to the Veterans Administration for veterans benefits.

Impact on Persons Not Receiving Clemency

It was a consistent principle of the President's Clemency Program that no one be coerced into applying for clemency--or made worse off as a result of having applied. To do otherwise would be neither clement nor fair. For this reason,

we are concerned about the impacts of the clemency program on those who did not apply, did not complete alternative service, or were denied clemency.

The Clemency Program may have stimulated a greater public tolerance for everyone who committed draft or AWOL offenses during the Vietnam era. If so, those who did not receive clemency could benefit from the goodwill extended to those who did. We expect that this will be the case.

Of course, the reverse may be true: Individuals who could have applied for clemency but failed to do so (out of choice or ignorance) might face greater public disrespect than ever before. If an individual were eligible for but did not receive clemency, it is possible that adjudicative or administrative bodies will take adverse notice of that fact when dealing with that individual. For example, a military discharge review board might look with particular skepticism at an upgrade appeal of a person who might have applied for clemency, but did not. The Veterans Administration may do the same for former servicemen appealing for veterans benefits despite their bad discharge. Sentencing judges, law enforcement officials, licensing bodies, credit agencies, and others may likewise look askance at an eligible person's failure to receive clemency. With over 100,000 of the estimated 125,000 eligible persons not having applied for clemency, these possibly adverse impacts are of great significance.

We were the only clemency granting agency who denied clemency to some of our applicants (about 5%--or 800 cases). In making those case dispositions, we did not intend to leave those individuals in a worse position than before they applied. It is possible that those to whom we denied clemency--or who fail to complete alternative service--may be worse off than before they applied. Being denied clemency may be a personal embarrassment and, perhaps a stigma. We did not announce the names of those denied clemency, and we are concerned that the confidentiality of those individuals not be infringed upon by anyone else. We

are equally concerned about the confidentiality of those who fail to complete their alternative service.

Conditional, Not Unconditional Clemency

The qualities of mercy and forgiveness inherent in the President's program should not be interpreted as an admission that those who broke the law were correct. By creating the program, the President never intended to imply that the laws were wrong or that the clemency applicants were right. We believe that rights and responsibilities of citizenship are central to the theme of any meaningful clemency or amnesty program and any such program must be evaluated in terms of its reinforcement of those rights and responsibilities.

We realize that there is not now and may never be a national consensus on what a citizen's responsibilities are during time of war--especially if that citizen cannot support the war on religious or ethical grounds. We can only take a position on the subject in the same manner as any citizen (or group of citizens) might. We represent a cross-section of backgrounds, views, and personal interests, however, so our own consensus on this point may be of some interest.

We believe that when a citizen breaks a law he considers unjust, it is his responsibility to accept the designated punishment for his offense. Likewise, it is the responsibility of his government either to punish him or to change its laws, to prevent (or deterrent) impact of punishment is no longer important--in other words, once the unpopular war has ended--it is the government's further responsibility to temper its punishment with compassion and mercy. However, official forgiveness for an individual's failure to serve his country in time of war does not discharge him from his outstanding obligation of national service. Only in circumstances where an individual's punishment could be construed as a fulfillment of his obligations of national service do we believe that anyone can be officially "forgiven" without performing alternative service in the national interest.

Likewise, we consider it fair for the President to have conditioned his grants of clemency upon a good faith application form an eligible person. Executive clemency means more when it is an offer, not just a pre-emptory gift. The President, speaking for the American people, offered reconciliation. That reconciliation must

be mutual. If the 100,000 non-applicants were to have knowingly accepted his offer, this President--and, indeed, this country--would owe them nothing more. Our only concern about those who did not apply is that many have failed to realize in time they were eligible.

However, we believe that the conditions must have been reasonable for the program to have been fair. This means two things: First, applicants must have had a reasonable opportunity to fulfill the condition of application. They must have recognized their opportunity and obligation to apply. As described later, we have some doubts about whether many of our non-applicants did recognize such an opportunity. If this is true, the program's condition of application may have been fair in theory, but unfair in effect.

Second, applicants must have had a reasonable opportunity to fulfill the condition of alternative service. Understandably, the fulfillment of one's obligation of service should involve some personal sacrifices, but it need not entail hardship. The cause of national reconciliation is hardly served if an individual quits his job to do alternative service for three months, cannot regain his job afterwards, and has to go on welfare as a result.

Our applicants were typically assigned to 3 - 6 months of alternative service. We assigned such short periods in recognition that our applicants' obligation of national service had already been partially fulfilled, and we were asking only for an additional gesture of service. According to Selective Service, full-time alternative service jobs of such short duration are hard to find. Also, some of our applicants are reluctant to risk losing their current jobs through such a brief interruption. Over half of our applicants have wives, children, or others dependent upon them for financial support. In performing alternative service, we are concerned that many may complete their alternative service periods without doing any work -- because of their inability (and Selective Service's inability) to find appropriate work. Similarly, we are concerned that many others may be terminated from the program because of their

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unwillingness to quit steady jobs for other work of such a short duration.

By recommending short periods of alternative service, it was not our intent to deny pardons to those individuals. If a sizeable proportion fail to complete alternative service, an important part of our Board's mission will also have failed.

A Limited, Not Universal, Program

On balance, we consider the scope of the program to have been quite generous. Rather than require a test of sincere opposition to the Vietnam War (which would have been unfair to people less able to articulate their views), the program was designed to include anyone whose offense may have involved opposition to the war or the military. Sixteen percent of the military applicants to our program and 81% of the applicants to the DOD program went AWOL out of opposition to the war or military, demonstrating the generosity of the program in defining eligibility. However, some categories of individuals remained ineligible despite the obvious relationship between their offenses and their opposition to the war. The clearest example of this was the serviceman who refused to obey an order to go to Vietnam. In his case, the military could have discharged him either for missing movement (qualifying him for clemency) or for disobeying orders (not qualifying him for clemency).

A Program of Definite, Not Indefinite, Length

The Clemency program was at first scheduled to accept applications for 4½ months. Because of a surge in our applications, two one month extensions were granted by the President. His apparent purpose of ending the program was to put the issue of clemency behind us as quickly as possible, so that we might also put the War behind us as quickly as possible.

Out of an estimated 123,000 persons eligible for clemency, only 22,500 actually applied to the three separate programs. This 18% application rate seems disappointing at first glance; however, for a program which accepted applications for only six months, that percentage is unusually large. To our knowledge, there has been no other Federal program which has drawn such a rapid response during its first six months. For example, HEW's Supplemental Income Security program, offering cash grants for low-income elderly persons, received applications from only 9% of its eligible target group during its first six months, and it took a full year for the program to match the clemency program's figure of 18%. This was true despite SIS's well-financed promotional campaign. Given the short time span and limited resources of our outreach efforts, we consider our application rate to be rather high. Unfortunately, we can take little solace from that fact. The SIS program is still accepting applications, but we are not.

We believed, at first, that those eligible for clemency would be well-educated, well-informed, and alert to a communications "pipeline" among themselves which would carry the news about the program. We also believed that veterans counselors would correctly advise former servicemen with bad discharges about their eligibility for the program. Both of these assumptions were wrong. A late December survey of twelve persons eligible for clemency showed that not one of them knew he could apply. In early January, the mother of a Vietnam Veteran with a bad discharge because of AWOL contacted General Lewis Walt of our Board to ask if the local Veterans Administration office had been correct when it told her that her son was not eligible for clemency.

Our Public Information campaign did not begin until mid-January, yet it stimulated a five-fold increase in applications before the month ended -- and over a twenty-fold increase before the second deadline extension expired at the end of March.

The application period was surely sufficient for those who knew from the start what the program offered them. They had ample time to make up their minds about applying. We suspect (but we cannot be sure) that virtually all of those eligible for the Department of Justice had such a sufficient period. However, it is our understanding that the number of applicants to the Department of Defense program was less than it might have been because of widespread misunderstandings about the fairness and decency of the procedures followed by the Clemency Processing Center at Fort Benjamin Harrison. Likewise, it is our firm belief that the small percentage of applications to the Presidential Clemency Board was attributable to the lack of public awareness of our eligibility criteria. The rising monthly tallies of new Board applications (800 through December, 4000 in January, 6000 in February, 10,000 in March) indicates that even more applications would have been received had our program (and Public Information campaign) continued. Informal Telephone Polls conducted by our staff found that even as late as March, 90% of our applicants had only learned of their eligibility within the past few days. Usually a news article or television announcement had been responsible for their application.

The degree to which the American public still misunderstands the President's program was illustrated by the recent Gallup poll. A substantial 72% of the American public had heard of the clemency program; 17% realized that it included fugitive draft resisters and deserters in the U.S., and 43% thought that it was for fugitive draft evaders and deserters in Canada and other countries. However, very few -- 15% -- understood that convicted draft offenders and discharged AWOL offenders could apply to the Board. Only 14% thought that a Vietnam Veteran discharged for a later AWOL could apply for clemency. It is worth noting that the

percentage of the public which understood our eligibility criteria corresponded almost exactly with the percentage of our eligible persons who applied by the March 31, deadline.

It is our firm conviction that many eligible persons did not apply because, even by the end of March they still did not know they could apply. As the Gallup poll indicated, they probably still do not know that the program was for them.*

*The Gallup Poll discovered that a slight plurality of Americans (48% versus 42%) do not favor a reopening of the President's program. However, the widespread misunderstanding about our eligibility criteria requires that a different perspective be taken of these results. In effect, ___% favor giving eligible persons a second chance to apply. We expect that a much greater percentage would favor giving un-informed eligible persons a first chance to make up their minds about applying.

A Case-By-Case, Not Blanket, Approach

Despite the wholly discretionary character of any grants of executive clemency, our program must be judged in terms of the fairness of our rules and the consistency with which we followed them. To be worthy of the respect and confidence of all citizens, we must have observed the basic principles of a fair legal process.

Questions of process arise primarily in any Clemency/Amnesty program which follows a case-by-case approach. Any blanket amnesty program would raise relatively few, if any, due process issues. The proper context for any discussion, therefore, is whether the President's program satisfactorily dealt with this extra burden. Absolute --- not comparative -- standards apply. Administrative requirements cannot be used as a justification for any short-cuts of due process.

At the Presidential Clemency Board, we have made every effort to apply fair rules and follow them with consistency. We occasionally had to modify our rules in mid-course, sometimes before corresponding changes could be made in our regulations. However, this was only done when it appeared that the rights and interests of our applicants would not be affected. The procedures which we imposed upon ourselves--quality control of casework, codification of policy precedents, the 30-day period for applicants to comment on their case summaries, and post audit of case dispositions--often--added time and administrative difficulty to our process, but we considered them essential to maintain the quality of our work. The seriousness with which we took our responsibilities was exemplified by our publication of an in-house professional journal, the Clemency Law Reporter. Our Board and staff of over 300 attorneys maintained a continuous dialogue about how our procedures were or were not consistent with due process; when changes were felt necessary, they were made. Ours was not a perfect process--it certainly was too time-consuming to suit us--but it was a reasonable one, carried out in good faith.

We consider our baseline formula, mitigating factors, and aggravating factors to have been fairly developed and fairly applied. Uniformly, they were developed through a clear process of Board consensus about what was relevant about the backgrounds of our applicants. Through the publication of policy precedents in the Clemency Law Reporter,

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we internally codified our policies. We applied them as consistently as could be expected, given the fact that all but a few hundred of our cases were decided in three-person Board panels.

On balance, the case by case approach offered us a means for making the right kind of clemency offer to each of our applicants. Without it, we might have been less generous with Vietnam veterans and persons who committed their offenses because of conscientious opposition to war. Likewise, we might have been more generous with those whose offenses resulted from irresponsibility, selfishness, or cowardice. This would have had the effect of demeaning the President's Constitutional pardoning powers.

Blanket amnesty would have treated all cases alike. This would have been fundamentally unfair -- to our applicants and to the American people. Consider the following two cases:

(Case # 09067) Applicant did not go AWOL until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the 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 three months of ending his first. He served as an infantry man in Vietnam, was wounded, and received the Bronze Star for Valor.

(Case #00206) Applicant met his wife, a Danish citizen, shortly after arriving in Germany on a military assignment. She became pregnant, and he went AWOL to marry her. After turning himself in, he was returned to Germany and placed in pretrial confinement. However, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests for theft and narcotics charges, received a sentence of 10 months imprisonment, and was deported to the United States.

Were the President to grant a Pardon to the second applicant, he would have cheapened the Pardon granted to the first. His friends and employers would have been more reluctant to acknowledge that he had earned his Pardon.

Likewise, the American people might have assumed that, since all applicants would have been treated alike, all applicants would have been alike. Many of the hard feelings generated during the Vietnam War resulted from such blanket judgments. By fostering such an attitude, blanket amnesty might have perpetuated -- and not healed -- the wounds of an era.