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II. THE PRESIDENT'S CLEMENCY PROGRAM

F. CONDITIONAL, NOT UNCONDITIONAL, CLEMENCY

F. Conditional, Not Unconditional, Clemency

1. Introduction

The President extended his offer of clemency in a spirit of reconciliation. At the same time, he expected those to whom his offer was made to accept it in a spirit of reconcil ation. This meant two things: First, the individual had to step forward and request that he be accepted back into the community; second, he had to indicate his willingness to again accept the responsibilities of a citizen by performing a period of alternative service. This fundamental part of the President's Program most clearly distinguishes it from proposals for unconditional amnesty.

The President believed that an unconditional program would be appropriate for at least three reasons. First it would serve to divide the country further, when the great need was for reconcilation. While no alternative service could match the hardships of the millions who served honorably in Vietnam, much less the sacrifices of those who were wounded or died, the President rightly believed that reconcilation would occur only if those who did not perform their military obligation were required to perform a kind of substitute service.

Second, the President believed that those who failed to serve could have no sound objection to doing the same kind of service as that performed by thousands of conscientious objectors during the Vietnam era. This

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/Certain applicants to the Presidential Clemency Board received a form of immediate clemency even if their pardon was conditioned upon performing Alternative Service. Persons furloughed had their prison sentences commuted when the President signed their clemency warrants. Others with probation, parole, or fines still outstanding also had those portions of their sentences commuted immediately.

service permits a citizen to fulfill his obligation to his country by non-military means if he cannot in good conscience bear arms on its behalf.

Finally, the President's firm desire that individuals be treated on a case-by-case basis, and offered clemency according to the particular circumstances of their case, required that conditions be imposed which could reflect these different decisions. The alternative service condition was peculiarly suited to this because it enabled the Board to adjust the length of service to fit each individual case. The power to pardon, created in Sections 1, 2, and 3 of the Constitution, carries with it the power to condition the pardon upon the performance of certain conditions before or after the grant. In Schick v Reed ( ) the Supreme Court made a thorough study of the Presidential pardon power, concluding:

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

In order to treat each individual case fairly and justly, the President chose to exercise his prerogative to grant clemency only after certain conditions had been met.

2. Application.

The President could have directed the Board to review the cases of all those eligible without the requirement of an application. However, since the grant of a pardon must be accepted by the recipient and also could involve performing alternate service, it would have been a useless gesture to review the cases of persons who would have declined the

President's offer anyway. Those individuals who wished to be considered for clemency were thus required to make a specific application for it.

The requirement that individuals affirmatively apply for clemency had one unavoidable consequence: It made it incumbent on the Board that we inform potential applicants of the existence of the program. We are persuaded that substantially all of those eligible for the DOD and DOJ phases learned of their eligibility, but also believe that a substantial number of persons eligible for our portion were not aware of their elibility.—/

The application criteria were liberally construed. To make a timely initial filing, the applicant or a person acting in his behalf had to contact any agency of the Federal government not later than the deadline of March 31, 1975. If this contact was in writing by the applicant himself, or his attorney, it was considered to be a valid application. If the initial filing was made over the telephone or by someone other than his attorney, he had until May 31, 1975 to confirm his request for clemency.

Where the application contained insufficient information for us to obtain the facts necessary for our case-by-case determination, we tried to contact the applicant and obtain these facts. However, we could not consider applications

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/ This subject is treated in more detail at pages _____ in this report.

absentee took the oath and agreed to perform alternative service, he was given an undesirable discharge. Only after an eligible applicant had complied with the application requirements of his segment of the Program was he allowed to start performing his alternative service period to earn an upgrade to a Clemency Discharge.

3. Alternative Service

Once we determined the disposition of a case, it was referred to the President for his approval and signature. The President did not execute formal grants of clemency in two classes of case--where the individual's conviction was not yet final and appeal rights might result in reversal, and where the individual was presently incarcerated for a subsequent offense. In both cases the President signed a "letter of intent" to offer clemency once the conviction became final or the individual was released from confinement, as the case may be. The obligation to begin service did not begin until the warrant was signed.

Not all of our applicants were asked to perform alternative service. Approximately fifty percent of our applicants were asked to perform three to twelve months at a suitable alternative service job, but, forty-three percent received immediate pardons or clemency discharges, without having to do alternative service.

Those who were required to perform alternative service under any part of the President's program they came under the jurisdiction of the Selective Service System, pursuant to Executive Order 11804. From the date that we mailed the letter to one of our applicants informing him that the President's offer of clemency was contingent upon successful completion of alternative service, he had thirty days in which to enroll with Selective Service, Department of Defense and Department of Justice applicants had 15 days.

All individuals with alternative service to perform were informed by their referring agency that under Selective Service rules they could perform this service in any state in the United States. To enroll they had to go to the place where they wanted to reside and contact the nearest office of Selective Service. There are over 650 such offices throughout the United States. (These offices are supervised by 56 State Directors, located in each of the 50 states plus New York City, the District of Columbia, Puerto Rico, Guam, the Panama Canal Zone, and the Virgin Islands.) Initially he had the opportunity of finding a job of hiw own choosing. If he found a suitable job that he wished to perform, he was required to notify his State Director a minimum of ten days before the end of the thirty day period. This gave the State Director ample time to determine if, in fact, the job met the eligibility criteria.

The following criteria for acceptable alternative service jobs were established by Selective Service:

A. The enrollee must work full-time (i.e., forty (40) hours per week) at a job that promoted the national health, safety or interest,

B. The enrollee must not interfere with the competitive labor market (i.e., he cannot be assigned to a job for which there were more qualified applicants who were not returnees than there were spaces available),

C. The job must be with a non-profit organization (e.g., the government, certain religious organizations, other charitable organizations).

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

E. The Selective Service sought to find jobs that would utilize any special skills or talents that an enrollee had.

If the enrollee did not find a suitable job, the State Selective Service Director had to have found one for him by the end of the thirty day period.

Because of local economic situations, it has often been difficult for enrollees to find their own jobs, and it has not even always been possible for Selective Service to place every enrollee within the thirty day period. To be fair to the enrollee, Selective Service rules specified that if through no fault of his own the enrollee had not been placed in a job within the thirty day period, creditable time would commence on the thirty-first day following his enrollment.

While this provision is not entirely satisfactory since it permits an individual to "earn" clemency before he has a job, it avoids penalizing individuals who are willing to serve but for whom no job is available.

For many, alternative service jobs have offered the beginning of a new career:

> A former Marine's alternative service has consisted of assisting a jailer. He adapted well to his job, went to school on his own time, and is now a deputy sheriff.
>
> An Army veteran was assigned as a rodent and insect control inspector for the city's health department. His supervisor is so pleased with his work that he hopes to retain him after his alternative service is over.

So far, almost 70 people have completed their periods of alternative service under the President's program. As the table below indicates, the Department of Defense segment of the program has the highest number of applicants in this category. Others have begun their jobs, but -- unfortunately -- many others have not.

Information on Reconcilation Service Program

August 11, 1975)

Status	Military	Department of Justice	Clemency Board	Totals	Cummulative Totals
Enrolled	4508	723	101	5332	-
Completed A/S	52	9	7	68	68
At Work	1353	459	19	1831	1899
Referred to Job(s)	909	170	12	1091	2990
Job Interruptions	145	29	2	176	3166
Postponed	63	21	2	86	3252
New Enrollees		15	57	72	3324
Terminated	1986	20	2	2008	5332

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

The failure of many of our applicants to enroll with Selective Service or to begin alternative service work may be the result

of two factors. Many of our clemency recipients may not understand some basic facts about their alternative service obligation. Unlike the other two agencies with clemency programs, we were unable to counsel our applicants in person. Likewise, our shorter alternative service assignments of three to six months may make it harder for our applicants to find jobs.

III

III. PCB CASE DISPOSITIONS

CHAPTER III. CASE DISPOSITIONS

The products of our year's work on the Clemency Board were our 16,000 case dispositions. Most Board members participated in thousands of these decisions, each one carefully determined on the basis of our baseline formula and designated factors. In hearing so many cases, some inconsistencies were bound to occur. However, the process we followed and the substantive rules we applied reduced these inconsistencies to a minimum.

Almost always, our different treatment of different kinds of individuals reflected the contrasting facts of their cases. For example, our No Clemency rate for black applicants was over twice (12%) what it was for whites (5%), because of the greater number of blacks who had been convicted of violent felony offenses. (Our pardon rate was the same for black and white applicants -- (43%).

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

Our actual case dispositions are listed below: *

PCB FINAL DISPOSITIONS - MILITARY

	Number	Percent	Cumulative
Upgrade	468	3.6	3.6
Pardon	4420	34.0	37.6
1-3 mos.	2613	20.1	57.7
4-6 mos.	2977	22.9	80.6
7-9 mos.	1235	9.5	90.1
10-12 mos.	442	3.4	93.5
13 + mos.	26	0.2	93.7
No Clemency	819	6.3	100.0
Total	14,000		

* These are projections based upon current Board trends.

PCB FINAL DISPOSITIONS - CIVILIAN

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

PCB FINAL DISPOSITIONS - TOTAL

	Number	Percent	Cumulative
Upgrade	468	3.1%	3.1%
Pardon	6072	40.5%	43.6%
1-3 mos.	2777	18.5%	62.1%
4-6 mos.	3075	20.5%	82.6%
7-5 mos.	1257	8.4%	91.0%
10-12 mos.	476	3.2%	94.2%
13 + mos.	34	.2%	94.4%
No Clemency	841	5.6%	100.0%
Total	16,000		

For our military applicants, we had four types of case dispositions: Upgrades recommendations, Outright Pardons, Alternative Service, or No Clemency. For civilian applicants, we had three: Outright Pardons, Alternative Service, No Clemency. In addition, our alternative service dispositions could either stay at the applicant's baseline, go up from that baseline, or go down from it. As shown below, our applicant's baselines almost all were between thre e and six months.

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

Examples of Case Dispositions

The reasons for our case dispositions varied greatly from case to case. However, it is possible to give examples of frequently-encountered categories of cases. In the discussion which follows, we illustrate our different types of dispositions for military and civilian applicants.

Military Applicants

The most generous disposition for military cases was an upgrade recommendation.

We recognized that a few military applicants had truly outstanding service records prior to their AWOL proglems. When we found the offenses were not so serious that a pardon was warranted, we also recommended that the applicant's discharge be upgraded and that he receive veteran's benefits. As a minimum, applicants must have had creditable service and a tour in Vietnam to be considered, but wounds in combat, decorations for valor, and other mitigating factors were also important.

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

Although only 3.6% of our military cases were so outstanding as to qualify for upgrade recommendations, 34% of our military cases merited an outright pardon without upgrade recommendations. There were two broad groups of cases that often received pardons. First, there were the applicants who had understandable reasons for their offenses.

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

The other broad group of military pardon cases were those applicants whose offenses were those applicants whose offenses were relatively minor and whose service records were good:

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

The bulk of our military cases resulted in alternative service dispositions. As a general rule, these cases involved both aggravating and mitigating factors which balanced out.

(Case #00291) The applicant commenced his first AWOL after he was assaulted by a cook while in KP. After his second AWOL, he was allegedly beaten by 5 MP's while confined in the stockade. On the other hand, he committed four AWOL's, the last one lasting almost 3 1/2 years, and had less than one month of creditable service.

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

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

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

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

(Case #14930) After discharge, applicant was convicted in a civilian court of first degree murder and second degree robbery. He received

a sentence of 25 years to life and will not be eligible for parole until 1997.

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

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

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

(Case #03444) Applicant received an SCM for two periods of AWOL (one day each) and one charge of missing movement. He then received an NJP for one AWOL (one day), another NJP for three AWOL's (1; 1; 10 days), and one NJP for two AWOL's (7; 1 days). He then received an SPCM for two AWOL's (2 months 17 days; 3 months 19 days). He accepted an undesirable discharge in lieu of court martial for one period of desertion (2 yrs. 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 month 2 days; 2 months 13 days; 6 months 29 days) and one period of non-qualifying AWOL (3 months 28 days). This is a total of one period of desertion, 15 periods of qualifying AWOL and one non-qualifying AWOL (total of 5 years).

Civilian Applicants

An overwhelming majority of our civilian applicants received an outright pardon without having to perform additional alternative service. It is difficult to categorize the pardon cases; such factors as conscientious reasons for the offense, an improper denial of conscientious objector status, other personal or procedural unfairness, employment or other service to the public, and surrender to the authorities all strongly influenced the decision to grant clemency. Occasionally we had a case that combined them all.

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

Pardon Conditioned Upon Alternative Service

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

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

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

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

No Clemency. Very few of our civilian applicants did not receive clemency. When they did not, it was often because they had either committed other violent or heinous felonies.

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

We also denied clemency to applicants whose attitude and uncooperativeness were contradictory to the spirit of the clemency program.

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

ANALYSIS OF BOARD DISPOSITIONS

The Board's case dispositions can perhaps best be understood by looking at their relationships to the mitigating and aggravating factors. As one might expect, case dispositions hinge directly upon the presence of absence of several key factors. Consider the following table:*

Mitigating	Veterans Benefits	Pardon	Alternative Service	No Clemency
1	35.6%	28.0%	27.9%	31.2%
2	49.8	40.6	45.5	23.7
3	19.7	18.2	14.0	12.1
4	1.0	21.8	3.9	1.7
5	20.8	2.4	.5	-
6	99.6	73.1	73.1	73.5
7	98.1	33.5	8.6	18.4
8	16.3	20.0	9.6	7.0
9	-	4.0	.5	.2
10	4.2	29.3	4.8	.2
11	51.0	50.2	36.9	20.9
12	47.4	7.4	.8	1.7
13	40.6	10.5	3.2	2.6
14	86.6	40.2	27.3	22.8
15	41.5	2.7	.2	.2
16	35.1	4.3	.3	1.0

Aggravating	Veterans Benefits	Pardon	Alternative Service	No Clemency
1	33.1%	32.2%	46.4%	92.3%
2	0	.1	.1	.4
3	.3	.1	.2	.8
4	.6	1.1	1.2	6.5
5	3.0	9.5	41.7	55.7
6	0	1.1	.5	.4
7	.9	1.9	4.5	10.3
8	81.0	58.3	81.1	86.8
9	5.9	44.3	68.3	56.7
10	5.1	3.9	7.9	4.1
11	.9	3.6	10.9	11.5
12	7.3	18.3	31.2	24.1

* This table combines military and civilian cases.

The above table made no distinction between military and civilian cases. However, the 83% pardon rate for civilians was twice that for military applicants (41%). This is largely attributable to the different factors prevailing in the two types of cases. The following table shows the frequency with which all factors were applied in civilian and military cases.

MITIGATING FACTORS		Percentage of Civilian cases *	Percentage of Military Cases
#1	Inadequate Education	6.1	35.2
2	Personal/Family Problems	12.7	46.3
3	Mental/Physical Problems	9.7	15.1
4	Public Service	51.9	1.5
5	Service-Connected Disability	0.6	3.1
6	Creditable Military Service	2.5	81.3
7	War Zone Service	1.7	26.4
8	Procedural Unfairness	6.6	13.1
9	Denial of CO Status	11.7	1.1
10	Motivated by Conscience	65.9	4.6
11	Voluntary Return	59.7	38.4
12	Mental Stress from Combat	0.4	6.4
13	Combat Volunteer	0	10.0
14	Military Performance	1.1	41.3
15	Decorated for Valor	0	4.3
16	Wounded in Combat	0	3.8
(None)		5.3	(30)

AGGRAVATING FACTORS		Percentage of Civilian Cases	Percentage of Military Cases
#1	Other Adult Convictions	6.1%	48.8
2	False Statement to PCB	0	0.6
3	Physical Force	0.6	1.1
4	Desertion During Combat	0.4	2.4
5	Selfish Motivation	16.7	27.9
6	Failure to do Alternative Service	4.9	0.3
7	Probation/Parole Violation	5.7	3.7
8	Multiple AWOL/UA Offenses	1.5	80.8
9	Extended AWOL/US	0.4	63.0
10	Missed Overseas Movement	0.2	5.6
11	Other Offenses	0	3.0
12	Apprehension by Authorities	3.4	17.6
(None)		(48.3)	(1.6)

Apart from the factors which were distinctly military, a few patterns emerge. Civilian applicants were much more likely to have mitigating factor #10 (conscientious reasons for offense), while military applicants were much more likely to have aggravating factor #1 (other felony convictions or other court-martial convictions). As the discussion below demonstrates, these two factors alone were accountable for much of the difference between civilian and military case dispositions.

* Note that a small percentage of our civilian applicants served in the military after their draft offense convictions.

MILITARY APPLICANTS

Mitigating and aggravating factors often had a combined,rather than separate effect upon case dispositions. For example, mitigating factor #6 indicated the length of creditable military service, while mitigating factor #14 reflected the quality of service. The two together told a much different story about a person than did one without the other. Consider the following chart of the eleven most frequent combinations of mitigating and aggravating circumstances in military cases, ranked in order of the generosity of our case dispositions:*

Agg. Factors	Mit. Factors	# of cases	Pardon	1-3AS	4-6AS	7+AS	N/C	Leniency Ratio
8,9	2,6,11,14	47	18	17	10	2	2	3.09
1,8,9,12	2,6,14	66	30	16	14	3	3	3.02
1,8,9	1,2,6,11	50	21	10	13	4	2	2.88
8,9,12	1,2,6	44	10	21	10	3	0	2.86
1,8,9,12	2,6	78	15	22	31	7	3	2,85
1,8,9	2,6,11	63	15	22	20	3	3	2.84
1,8,9,12	1,2,6	48	13	19	13	1	2	2.83
8,9	2,6,11	57	10	23	22	2	0	2.72
8,9,12	2,6	67	11	19	33	4	0	2.55
5,8,9,12	6	43	1	4	25	13	0	1.84
1,5,8,9,12	6	59	0	6	24	24	5	0.76

Add just one factor -- mitigating factor #7 (Vietnam service) -- to the same combinations, and completely different results emerge. The table below lists the thirteen most frequent combinations of factors applicable to Vietnam veterans. Note the much more widespread application of mitigating factor #14 and the total absence of aggravating factor #5. The pardon rate of roughly 75% for Vietnam veterans contrasted with a pardon rate of only about 25% for other military applicants. Specifically, when mitigating factor #7 was added to the two combinations listed at the top of the above chart markedly different results occurred. Again, note that the "No Clemency" cases all involved aggravating factor #1, probably reflecting felony convictions for violent crimes.

CIVILIAN CASES

As noted earlier, civilian cases were generally decided more generously than military cases, usually because of the absence of aggravating factors and the presence of mitigating factors #4 (prior alternative service) and #10 (conscientious reasons for offense). In the absence of aggravating factor #5 (selfish reasons for offense), the presence of either of these two mitigating factors generated a pardon in 97% of all civilian cases. However, a finding of aggravating factor #5 reduced the civilian pardon rate to just 35%. Some No Clemency decisions were based on that factor alone. The table below lists the twenty most frequent civilian factor combinations, in decreasing order of the generosity of case dispositions. Note that some pardons were granted without any Mitigating Factor, and one No Clemency without any aggravating factor. These cases were flagged by computer for possible reconsideration by the Board.

AG	Mit.	POP	Pard.	1-3AS	4-6AS	7+AS	N/C	Ratio
None	2,4,10,11	32	32					4.00
None	9,10,11	28	28					
12	4,10	19	19					4.00
12	10	16	16					4.00
None	4,9,10	13	13					4.00
None	3,4,10,11	10	10					4.00
None	10,11	152	150	2				4.99
None	4,10,11	345	340	4	1			3.98
None	4,11	23	22	1				3.96
None	4,10	117	112	4	1			3.95
None	10	64	59	3	2			3.94
6	4,10,11	13	12	1				3.92
None	2,4,10,11	11	10	1				3.91
5	4	17	10	4	2	1		3.59
None	4	16	12	2		1	1	3.44
None	None	21	12	5	1	2	1	3.19
5	4,11	15	7	3	3	2		3.00
5	11	22	7	5	6	3	1	2.68
5	None	18	1	8	4	4	1	2.22

AG	MIT	POP	P	1-3AS	4-6AS	7+AS	N/C	Leniency Ratio
1,8,9	1,6	24	4	8	5	2	5	2.21
1,5,8,9	6,11	33	3	4	14	6	6	1.76
1,8	1,6,11	11	3	1	2	-	5	1.73
1,5,8,9	6,14	20	-	2	9	3	6	1.35
1,5,8	6	29	1	1	11	6	10	1.21
1,8	6	23	1	3	5	2	12	1.09
1,5,8,9	6	30	-	2	8	10	10	1.07

AGG.	Mit.	POP	Pardon	1-3 AS	4-6AS	7+AS	N/C	Ratio
1,8,9,12	1,2,6,7,14	11	11					4.00
1,8	6,7,14	10	10					4.00
1,8,9	2,6,7,11,14	13	12	1				3.85
8,9	2,6,7,11,14	19	15	3	1			3.74
8,9	2,6,7,11,13,14	11	8	3				3.73
8,9	6,7,11,14	11	8	3				3,73
8,9,12	2,6,7,14	17	13	2	2			3.65
1,8,9,12	2,6,7,17	18	14	2	1		1	3.56
1,8,9,	1,2,6,7,11,14	13	11		1		1	3.54
1,8,9	2,6,7,14	10	9		1			3.30
1,8	2,6,7,11,14	15	11	1	1		2	3.27
1,8,9,12	2,6,7,	11	7	2	1		1	3.27
1,8,9,12	6,7,14	10	5	1	2		2	2.70

The No Clemency Disposition in military cases usually (but not always) involved aggravating factor #1. Aggravating factor #5 was also often present, along with few or no mitigating factors. The chart below lists the ten most common combinations of factors which produced the greatest number of military No Clemency cases. The pardon rate for these cases was only about 5%. Note also that cases with both aggravating factor #1 and #5 and no mitigating factor almost invariably involved a jump from our baseline (almost always 3 - 6 months in military cases) or a No Clemency decision.

There were not many civilian No Clemency cases, but a look at them shows the importance of aggravating factors #1 (other felony convictions) and #5. Aggravating factor #1 was shown by the above table to have been present in none of the most prevalent combinations of civilian factors. However, it was present in 15 of the 19 civilian No Clemency cases, two of the remaining four being apparently unusual panel dispositions. In the table below, note the total absence of mitigating factor #10.

AG	MIT.	POP	Pard.	1-3AS	4-6AS	7+AS	N/C	Ratio
None	4	16	12	2	-	1	1	3.44
None	None	21	12	5	1	2	1	3.19
5	11	22	7	5	6	3	1	2.68
5	None	18	1	8	4	4	1	2.22
1,5	2	3	1	-	-	1	1	1.67
1,5	None	3	1	-	-	1	1	1.67
1	None	5	1	1	-	1	2	1.60
5,7	None	2	-	-	-	1	1	0.50
1,5,7	None	2	-	-	-	-	2	0.00
1,5,6	None	1	-	-	-	-	1	0.00
1,5,7	2	1	-	-	-	-	1	0.00
1,5	8	1	-	-	-	-	1	0.00
1,5	11	1	-	-	-	-	1	0.00
1	3	1	-	-	-	-	1	0.00
1	11	1	-	-	-	-	1	0.00
1	2,6	1	-	-	-	-	1	0.00
1,5,8	1,6,11	1	-	-	-	-	1	0.00

Comparison with Case Dispositions for the Other Programs

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

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

DOJ PROGRAM

Average Alternative Service by Circuit

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

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

COMPARISON OF PCB AND DOD CASE DISPOSITIONS

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

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

COMPARISON OF PCB AND DOJ CASE DISPOSITIONS

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

* This table assumes, obviously incorrectly, that all our military applicants were "average" applicants.

One further note should be made about the Justice Department case dispositions. For a wholly decentralized program, implemented by 94 United States Attorneys, the consistency of case dispositions was substantial. As indicated by the following table, the average alternative service assignments differed very little from circuit to circuit. Some extremes did occur: The Eastern District of New York assigned ____ of ____ applicants to 24 months of alternative service, while the Western District of New York assigned its ____ applicants only an average of ____ months of alternative service -- only ____ of whom received the maximum 24 months. However, these districts were the exceptions.

IV

A

IV. PCB APPLICANTS

IV. PCB APPLICANTS

A. INTRODUCTION

Chapter IV: PCB Applicants

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

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

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

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

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

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

IV
B

IV. PCB APPLICANTS

B. OUR CIVILIAN APPLICANTS

Our Civilian Applicants

During the Vietnam Era, there were approximately 28,600,000 men of draft-eligible age. About forty percent -- 11,500,000 -- served in the Armed Forces either before or during the Vietnam War.

The rest, 17,100,000 men, never served in the military. Of those, 12,250,000 either never registered for the draft, built deferment on deferment, had high lottery numbers, or were otherwise passed over by induction calls. Another 4,650,000 were given other kinds of permanent draft exemption usually because of mental or physical deficiencies; 145,000 of these exemptions were for conscientious objection to war.[1/]

The Selective Service System issued 209,000 complaints regarding individual draft offenses, usually for failure to report for induction or a pre-induction physical exam. Almost 90% (173,700) of the complaints never resulted in indictments. Some registrants agreed to enter military service as soon as their complaint was issued; others never had charges brought against them despite their continued refusal to join the service. Apparently, no records exist to show how many were in each of the two categories.[2/]

Only 25,300 Selective Service complaints resulted in grand jury indictments. Of those indicted, 4,522 remained fugitives until the start of the clemency program. The remaining 20,800 stood trial.

Most (12,100) were acquitted; 8,700 were convicted. Only 4,900 ever went to jail. [3] Thus, about 13,000 civilians either were convicted of draft offenses or were still facing draft charges when the President announced his clemency program.[4] For every one of them, 12,000 others escaped military service by other means. [5]

Background[6]

Our civilian applicants were predominantly white, and came from average American families. Over two-thirds were raised by both natural parents, most had one to three brothers and sisters, and evidence of severe family instability was rare. The proportion of Blacks and Spanish-speaking persons was about the same as found in the general population.

They grew up in cities and suburbs, with disproportionately many in the West and few in the South. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. Over three quarters had high-school degrees, yet only 18% ever finished college. Only a very small percentage ever had trouble with the law aside from their draft offenses. In most ways, they were not unlike young men in cities and towns across the United States.*

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

Two things set them apart. First, over 80% opposed the war in Vietnam strongly enough to face punishment rather than fight there. Second, they--unlike many of their friends and classmates -- were unable or unwilling to evade the draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They were unique in that they chose to stay within the system and pay a penalty for their conscientious opposition to the war.

Experience with the Selective Service System

Registration

Our applicants, like millions of young men, came into contact with the Selective Service System when they reached the age of 18. Often, it was their first actual contact with a government agency -- an agency with which they had little in common.

The rationale behind the concept of Selective Service was that established members of the community were the right ones to decide from a group of eligible young who would serve in the military and who would be exempt. It was hoped that this system would allow decisions to be made on a case-by-case basis. Board members who were sensitive to the national need could still consider the special circumstances that often surrounded individual cases.

This philosophy was based on a promise of trust and open communication between individuals and board members. Often that trust did not materialize. There were differences in age, life styles, racial composition, values and opinions concerning the Vietnam war.7/

The typical local board member was in his late fifties, with 20% over 70 years old. In the mid 1960's, 1.3% of all local board members were black and 1.5% spanish-speaking. Many of the state directors were Reserve or National Guard officers on active duty. Beginning in the late 1960's and early 1970's the Selective Service System made efforts to have the local draft boards more accurately reflect the population of their areas. For example, 16% of all local board members are now Spanish speaking, or of another minority background.8/

Classification

Immediately after our applicants registered with the local board, they were classified by their respective "neighborhood" draft boards according to its interpretation of the law and regulations of the system. Varying interpretations resulted from this decentralized system, and produced wide differences in the treatment afforded to similar registrants. Today, a single national interpretation of the law is promulgated in the regulations which are binding upon local draft boards and which are supported in detailed procedural

directives intended to provide uniformity of processing and equality in treatment.[9/] The reform did not affect the authority of the local draft board to classify men, but rather required that all local boards classify the same way.

Another major problem in the classification procedure was the lack of accurate and adequate information. The problem was two-fold. Information had to be swiftly and accurately conveyed from the National Headquarters to the local and state draft boards before it could be conveyed to the registrant. If local boards were ignorant or misinformed of the requirements of the law, policy and court decisions, their processing of registrants was likely to be flawed. Secondly, when information disseminated to our applicants was not an accurate explanation of their rights established by the courts and the Congress, the exercise of such rights was often meaningless. The problem is illustrated by testimony at Senate hearings on the draft in 1972. A parent of a son killed in Vietnam stated "I was appalled at how little sound, legal advice there actually was available to our young men, in spite of the fact that the Selective Service statutes have always constituted a clearly defined body of law readily available to the legal profession as a source of additional practice." [10/]

(Case # 3548) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification

(#3548) con't — was an orthodox religious belief in a supreme being.

Often, new registrants relied on the advice of local draft clerks, who were neither tested nor trained in Selective Service law, but who nevertheless gave the best advice they could and which the registrants then relied on.

(Case #2290) — Applicant made no attempt to seek a personal appearance before the local board or appeal their decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

Written materials were often no more helpful than the clerks. The language in many of the forms used by Selective Service was not understandable by most registrants, especially those that came from economically deprived backgrounds. One study showed that the form 150 (the conscientious objector form) required at least a high school graduate level reading skill to understand.[11/]

The problem of applicant misinformation was compounded by the difficulty national headquarters sometimes had in providing the local boards with prompt and adequate information regarding binding judicial interpretations of the Act. For example, the important case of Mulloy v. United States (398 U.S. 410) regarding classification processing was decided by the Supreme Court on June 15, 1970. This decision had the possibility of effecting every registrant within the system. The decision and interpretation regarding the decision were not communicated to local boards until

WELSH IN JUNE 1970?

August 11, 1970, a period of approximately two months. The landmark decision in Welsh v. United States (398 US 333) was decided the same day by the Supreme Court and expanded the scope of conscientious objection. Yet some two years after the Welsh decision, special forms for conscientious objectors had not been amended to accurately reflect this decision.[12/] Many court decisions regarding registration, classification and processing were never communicated to registrants in informational brochures. They had to rely on their own resources to gain a full understanding of their legal rights and obligations.

Because of the inadequate amount of information available, some of our applicants turned to draft counseling centers for information. However, even the trained draft counselors found it difficult to keep current regarding directives in the system. Subscriptions to GPO publications were unsatisfactory. For example, changes made in June 1971 did not reach the subscriber until February 1972.[13/] Requests by registrants and draft counsellors for state headquarters directives explaining policy and interpretations plus copies of Operational Bulletins were denied on the ground that these materials were internal communications.[14/]

Other questions of procedural due process arose. Our applicants did not have the right to a personal appearance prior to the local draft board's initial classification decision. When a personal

appearance before a local board or an appeal board was granted, they did not have the right to bring witnesses to their personal appearance. Also, local and appeal boards were originally not required to provide a registrant with reasons for their decision.

(Case # 00596) No reasons were given applicant regarding the denial of his claim for conscientious objector status. Consequently he was simply unaware of how or where to appeal his case to a higher level.

After 1971, such information was required, but often consisted of only a check-list with the general reasons for denial marked but not explained for procedure similar to one already found acceptable.

(Case # 1318) Denial of applicant's C.O. claim consisted only of the board's conclusions. His petition for certiorari was denied, although one Justice indicated that he felt procedural due process required the factual basis behind the conclusions be included.

Once a local draft board issued a final classification to our applicants, they could appeal to the state appeals board and under certain conditions, to the Presidential Appeals Board. The value of these appellate rights was questionable. State boards often gave their cases only cursory consideration, sometimes so, brief that the procedure was held to deprive the registrant of due process of law.[15/] However, these appeals were essential if our applicant hoped to prove his case in court.

(Case # 4296) Applicant failed to appeal his local board's denial of his C.O. claim, which was done without giving any reasons to the applicant for the denial. Although the District Judge indicated, that the local board's action was improper, he nevertheless convicted applicant because he failed to appeal the

(Case # 4296) con't local board's decision and thereby, exhaust his administrative remedies.

If an applicant was unsuccessful in his initial bid for a particular classification status--whether or not he appealed his local board's decision--he could request a rehearing at any time prior to receiving his induction notice. If his request contained evidence of a prima facie case for reclassification, the board had to reopen the case, and failure to do so was found to be a denial of procedural due process. This right was critical to an applicant, since a reopening theoretically brought with it the entire sequence of appellate rights associated with an initial classification determination. Similar appellate rights were not provided for a board's refusal to reopen, (as distinguished from a reopening with a denial of the claim). In addition, most circuits required that a denial of a prima facie reopening case be accompanied with a reason for the denial. In practice, this was not always the case.

(Case #2317) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim. In spite of this de facto rehearing, the board proclaimed no such reopening had occurred, and denied the applicant any appeal rights.

Deferments and Exemptions

Many of our applicants held and many more sought a range of deferments which would have postponed their draft eligibility, or exemptions which would have ended it entirely. The most common

deferments and exemptions were for student, occupational, hardship and mental/physical status.

During most of the Vietnam era, it was the policy of Selective Service to defer students who were enrolled on a full-time basis until they terminated or completed their formal college education, at which time they became available for selection and induction. The only legal requirement relating to student deferments was that which obliged the local draft board to permit college students called up for induction to finish their current academic year. A student's immediate future depended upon state headquarter's interpretation of the overall national policy. Some state and local boards instructed their registrants to use as a basis for determining 2-S status college qualifications tests scores and information regarding rank in class, while others told their local boards that these criteria were only advisory and could be ignored. The definition of the term "full-time student" posed many problems. Finally, some state headquarters extended student deferments to individuals in business, trade or vocational school, while others limited it to colleges.

There were three major criteria for obtaining an occupational deferment: The registrant had to be employed in industries related to the Defense Department, science, research and development, engineering and health services. His employer had to show that someone of similar competence was not available to replace the

individual for whom the deferment was requested. Finally, the employer had to show that loss of the individual to the draft would have an adverse effect on the employer's ability to carry out essential work. Formal guidelines and interpretations of these criteria varied among the state and local boards, and resulted in a lack of uniformity in the identification and determination of critical skills, occupations and professions.16/

The hardship deferment was granted only to those applicants whose induction would create "extreme hardship" for their dependents. To qualify, an applicant had to demonstrate that he made a substantial financial contribution to a qualified dependent, and that without this contribution, the dependent would suffer extreme hardship. Although the formulation of this test varied slightly among the circuits, determinations of extreme hardship were by their nature subjective, and as in the other deferments, there were varying applications of this standard among the local boards. Even when the facts were relatively objective, policies varied. For example, a provision in the 1967 Act authorized "fatherhood" deferments and was duly incorporated into the regulations, only to be revoked by the President in 1970. Thereafter, fathers were not automatically grant such deferments.

Because of manpower needs during the war, the Selective Service and Defense Department revised downward the physical and mental standards for service in the military. Physical and

mental exemptions thus became harder to obtain. The preinduction rejection rates for all causes dropped from about 50% in FY 65 to 40% in FY 66 and approximately 35% in FY 67. 17/ The Defense Department estimated that these revisions of standards increased the induction or enlistment or previously ineligible men by about 100,000 a year.

The exemption status of greatest concern to most of our civilian applicants was that of conscientious objector (I-O). We have evidence that almost half (44%) of our applicants took some initiative to obtain a "CO" exemption, and the true proportion may be even higher. Of that percentage, 15% never actually completed a CO application, 17% applied but were denied, and 12% were granted CO status. Many of our applicants evidenced a great deal of confusion concerning the CO exemption. There was no institutionalized method for informing prospective conscientious objectors when or how to fill out the necessary forms and present their case to the local board. A strinking 26% of our applicants subscribed to a pacifist religion which would ordinarily entitle them to CO status most (20%) being Jehovah's Witnesses. Because only 10% of our applicants received CO status for religious objection to war, it appears that the remaining 16% never applied or were denied. Many of our applicants were simply uninformed about the availability of the CO exemption and the procedures which must be followed to obtain it.

(Case # 10768) Applicant, a Jehovah's Witness, had his claim for ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and inducted one month later. (He later went AWOL and received an Undesirable Discharge.

Some of our other applicants knew enough about the existence of the exemption to inquire about it, but were subsequently discouraged by their local boards.

(Case # 803) In reply to applicant's request for a Form 150, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, applicant did not bother to return the form.

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

moral, ethical or religious, and the beliefs must be sincere.

Based upon these standards, it is surprising that more of our applicants did not apply for CO status, receive a CO exemption from their local boards, or raise a successful defense at trial. We have found that 66% of our civilian applicants committed their offense for conscientious reasons. Not all of these applicants would have qualified for a C.O. classification because many did not object to all wars, as required by Gillette. ( ).

(Case # 2338) Applicant's conscientious objector claim was denied by the local board because he objected only to the Vietnam War, rather than all wars.

Despite this, it is likely that more than the 12% of our applicants who actually received such an exemption would have qualified under today's standards. Why did this happen? Ninety percent of our applicants registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many of our applicants may have been reluctant to apply for CO status prior to Welsh out of recognition that, at the time, their moral and ethical beliefs would not have persuaded their local boards.

(Case # 1213) Applicant did not submit a CO application because it was his understanding that his local draft board would not consider a CO request unless a registrant were associated

(#1213) con't with a widely recognized pacifist religion and his refusal to participate in war in any form stemmed from his personal beliefs and general religious feelings. He pled guilty to failure to submit to induction and was convicted one year prior to Welsh.

Many others passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and 35% committed their draft offense before the decision. However, only 13% were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but a significant percentage of our applicants (26%) pled guilty to their charges. The most likely explanation for the small percentage of applicants who sought and were granted CO exemptions is their lack of understanding of what the Selective Service standards and procedures actually were. Despite Welsh, Selective Service made no immediate substantial changes in the form 150 to reflect this broadening of the CO category. As a result the format of the form 150 misled many applicants into thinking that the non-religious nature of their beliefs disqualified them from conscientious objector status.

(Case # 537) Applicant initially failed to fill out a form to request C.O. status because the religious orientation of the form led him to believe he would not qualify. After Welsh, the applicant believed he could qualify under the Supreme Court's expanded definition, and requested another Form 150. When the board returned a Form 150 identical to the one he received initially, the applicant

(# 537) again failed to complete it, believing that he could not adaquately express his beliefs on a form designed for members of organized religious.

This misinformation was often reinforced by the local boards.

(Case # 2320) Applicant failed to complete an outdated Form 150 after being told by his local board only members of certain religious sects were eligible. This occurred after the Welsh decision.

Those who did apply for CO status faced a form which asked about the philosophical nature of the applicant's beliefs, their relationship to his religion, and to the manner in which conducted his life. While less-educated persons may have been discouraged from applying for C.O. status because of the complexity of the Form 150 and other factors, the experiences of our applicants who did apply reveals no such bias. Of our applicants with college degrees, 28% applied for CO status, but only 4% were accepted. Of our applicants with less education, 19% applied, but 10% (more than half) were accepted. This may be attributable to the fact that persons with more education usually based their claims on moral and ethical, rather than religious grounds, as well as the fact that our applicants may not have been a representative sample of all C.O. applicants. Welsh specifically authorized local boards to grant CO exemptions to persons sincerely opposed to war on moral and ethical (i.e., non-religious) grounds, yet some (___%) of our civilian applicants had possibly valid "moral and ethical" CO applications denied after

Welsh. Some local boards may still have relied on a test which required belief in a supreme being. In one post-Welsh study of CO applicants, all those interviewed who failed to express belief in a supreme being had their CO applications denied.

(Case # 1373) Applicant's request for conscientious objector status was denied, partially on the basis that he had no particular religious training or expreience to establish opposition to war. This determination was made after the Supreme Court stated in Welsh that such formal religious training was not a prerequisite to conscientious objector status.

In contrast, CO applicants who claimed to be members of a pacifist religion enjoyed a 56% success rate throughout the Vietnam era. Registrants associated with recognized pacifist religions - Jehovah's Witnesses, Black Muslims, and the Society of Krishna - were also occassionally denied CO classification. The basis for denial of CO status by Selective Service in these instances was usually lack of sincerity. However, in many of these cases, the lack of familiarity with the teachings of a particular religion and the lack of general acceptance of that religion may have been factors in the denial of CO status. If the local board turned down as applicant's CO claim, he could appeal to the state appeals board. However, there were time limits and other procedures which appellante had to observe. Some of our applicants were apparently not advised about these procedures.

(Case # 2317) Applicant, a Jehovah's Witnsss, unaware of the time limitation on filing notice of appeal, continued to gather evidence for his appeal, which was ultimately denied on the procedural grounds of failure to give timely notice of appeal.

For many of our applicants, the realization that they were conscientiously opposed to war came only after they received an induction notice. This notice often acted as the catalyst which led to an introspective examination of the applicant's convictions, and a crystalization of his beliefs.

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

However, when a registrant's request for a change in status came after his induction notice was mailed, his ability to obtain a rehearing was considerably limited, because reopening under such conditions was prohibited unless the registrant experienced a change in circumstances beyond his control. The question then was whether his "late crystalization" constituted a change in circumstances beyond the applicant's control. The local boards were split on this issue until the Supreme Court spoke in 1971, holding in Ehlert v. U.S. ( ) that a post-induction-notice claim for consciencious objector status did not constitute a change in circumstances beyond the applicant's control. Accordingly, those applicants were left to press their claims in the military after induction.

Approximately one-eight of our civilian applicants did receive CO exemptions and were assigned to alternative service employment. Once the draft board recognized that a registrant was a conscientious objector, it assigned him 24 months alternative service in lieu of induction. Before 1971, there were wide discrepancies among states and local draft boards regarding standards of appropriate civilian work. One local board might have had a liberal policy of job approval allowing CO's to choose a variety of jobs, while another board might have imposed highly restrictive approval standards. Some individuals had difficulty holding alternative service jobs because of personal of family problems. Others decided that they could not, on good conscience, continue to cooperate with the Selective Service System because of their opposition to the war.

(Case # 560) Applicant refused to perform alternative service as a protest against the war in Vietnam, and specifically requested that his probation be revoked for those reasons.

However, most of our applicants assigned to alternative service who refused to accept such assignments from Selective Service did so because they felt their religion forbade them from cooperating with any part of a war effort. These applicants, mostly Jehovah's Witnesses, Muslims and Quakers, were prepared to accept an alternative service assignment ordered by a judge in their sentence upon conviction for refusing to perform alternative service. However,

many judges faced with such a request sentenced them to prison instead.

(Case # 2336) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System, on the grounds that even this attenuated participation in the war effort would violate his religious beliefs; he did indicate that he would be willing to perform similar services under the court's order of probation. Rather than accept this distinction, the Judge sentenced the applicant directly to prison for failure to perform alternative service.

The Draft Offense

To be eligible for the clemency program, our applicants must have committed at least one of six offenses enumerated in the Executive Order. These offenses include the failure to register (or register on time), failure to report changes in status (primarily changes in address), failure to report for pre-induction physical examination, failure to report for induction, failure to submit to induction, and failure to perform alternative civilian employment. The Clemency Board could not consider applications of those who had only been convicted of other violations of the Selective Service Act making false statements regarding a draft classification; aiding and abetting another to refuse or evade registration or requirements of the Selective Service Act; forging, destroying or mutilating Selective Service documents such as draft cards or other official certificates; or failing to carry a draft card or carrying a false draft card. However, because the vast majority of the Selective Service offenses committed during 1964-73

fell within the eligibility requirements of the clemency program, most civilian offenders during that period were eligible for the program.

Our typical applicant initially complied with his Selective Service responsibilities by registering for the draft, submitting classification-requests, and notifying his local board about changes in address and other changes in status. Betwwen the ages of 19 and 21, most of our applicants were classified 1-A. They, like 350,000 other young men during the peak draft years, were ordered to report for induction. Nearly all of our applicants reported for their pre-induction physical examination. It was not until the date of induction, after complying with regulations to the fullest extent, that our applicants actually decided to violate the Selective Service Law. In fact, of those applicants who received orders to report for induction, nearly half actually appeared for induction. But, when the time came to take the symbolic step forward, these applicants found that their conscience would not allow them to participate further in the induction process. At the time of our typical applicant's final decision to violate the law, he was between the ages of 20 and 22 and the year was 1970-72. For over 95% of these applicants, their failure to comply with the Selective Service law was their first offense.

Our applicants committed draft offenses which fall into three basic categories. The first of these categories, consisting of

approximately 13% of all our applicants, were those who failed to register, or to register on time and those who failed to report changes in status, such as new addresses. Many of these applicants did not graduate from high school, having achieved only an elementary level of education. In addition, they were often raised in economic and family environments which was not likely to lead to an appreciation of their Selective Service responsibilities. For example, according to Selective Service regulations and case law, "current address" was the address at which mail would have reached the registrant. While use of a false address was a willful violation, forgetfulness was no defense. Furthermore, the local board was under no obligation to find the registrant's current address, and giving the address of a parent or relative was not enough to avoid liability.

(Case # 822) The applicant's induction notice was sent by his local board to his mother. The letter was returned to the local board and subsequently the mother telephoned a new address to the local board. Local board mail still failed to reach the applicant, and he was indicted and convicted of failure to keep the board informed of his address. The last address his mother gave the local board was correct, but the court did not accept the applicant's defense that mail did not reach him because his name was not on the mail box.

However, most of our applicants in this category committed their offenses because of their unintentional misunderstanding of Selective Service obligations.

(Case # 3151) . . .The applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office but did not specifically notify his local board. He stated that he thought this action fulfilled his obligation to notify his local board in writing of address changes.

The second category of offenses committed by our applicants includes those who failed to perform required alternative civilian employment, comprising 13% of our civilian applicants. Typically, the applicant received a conscientious objection exemption from his local board because of his membership in a widely recognized Pacifist religious group as Jehovah's Witness, Black Muslim or the Society of Friends. These applicants complied with all Selective Service requirements prior to receipt of an order from Selective Service to report to a designated civilian job for two years work of national importance, intended as a substitute for military service these applicants refused to accept employment because they believed that because of its relationship to the war effort, such work would compromise their religious principles. However, as an indication of their acceptance of their continuing responsibilities as citizens, most of these applicants indicated at the time of their offense that they would perform alternative service, as long as it was at the direction of the courts.

Almost three-quarters of our applicants fell into the third category of offenses which relate to the induction process. This category includes those who failed to report for their pre-induction

physical examination, failed to report for induction, or failed to submit to induction. Applicants in this category represent approximately 74% of all our applicants. Following their classification as 1-A, these applicants were ordered by their local boards to report for pre-induction examinations, which only 4% of our applicants failed to do. Subsequent to passing the pre-induction examination, our applicant received orders to report for induction. Once induction was ordered, a postponement of the induction date, could have been sought but would not have invalidated the original order to report for induction, even if the inductee passed his twenty-sixth birthday in the interim. Once the induction order was issued and after all postponements were exhausted he had a continuing duty to report for induction, although it was often the practice of the Selective Service to issue several induction orders before filing a complaint with the district attorney, and many of our applicants received two or three induction orders. Approximately 38% of our applicants failed to report for induction, but nearly the same percentage decided to appear at the induction station for initial processing. Until the final step in this process, the oath of induction into the Armed Forces and the symbolic step forward, the inductee is under civilian control. It was at this final stage of the process that the remaining one-third of our civilian applicants broke the law.

Numerous reasons were given by our applicants for their offenses. The most frequent of-their-reasons was their conscientious objection to war in either general or particular form. Fifty-seven percent expressed either religious, ethical or moral objection to all war, and an additional 14% expressed specific objection to the Vietnam War. When other related reasons were considered, (such as denial of CO status), 81% of our civilian applicants committed their offenses for reasons related to their opposition to war. Expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in nearly four-fifths of these cases. By contrast, less than one out of six of all our civilian applicants were found by the Board to have committed their offenses for obviously manipulative and selfish reasons. Other major reasons given by our civilian applicants for their offense include procedural errors and denial of CO status (5%), various medical problems (6%) and family or personal problems (10%). In evaluating these reasons, we found that both family/personal problems and medical problems were determined to be mitigating in nearly all the cases in which applicants raised them. Surprisingly, procedural errors and improper denial of CO status were found in nearly one fifth of all cases, a far greater proporation than one would expect from the reasons given by our applicants. This large discrepancy was probably due to the unfamiliarity of most of our applicants with either Selective Service procedures or CO requirement .

Thus, many of our applicants probably were never aware that the disposition of their cases by Selective Service might have been either incorrect or not according to established procedure.

Experiences as a Fugitive

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

Most of our fugitive applicants who chose to go abroad went to Canada. Geographical proximity was one reason why some of our applicants chose Canada, and the similarity in culture, history

and language was another. However, the major reason for the large emigration of American draft-resisters to Canada was the openness of their immigration laws. After 1965, when the Pearson government accepted 1,700 American resisters (largely draft resisters) as landed immigrants, the Canadian government instituted a liberal immigration policy toward American draft resisters and military deserters. In 1967, Prime Minister Pearson's Parlimentary Secretary of the Department of Manpower and Immigration told the Canadian House of Commons that "an individual's status with regard to compulsory military service in his own country has no bearing upon his admissibility to Canada either as an immigrant or as a visitor." The present policy toward American draft resistors and military deserters was announced by Prime Minister Trudeau in 1969: "Canada will become a refuge from militarism."

The living conditions of draft-related emigres varied considerably. Many existed as transients, at first living in hotels and on the road. Others lived in Canadian homes until they were able to support themselves. With the average pay close to ten to thirty percent less than the income received in the United States and the unemployment rates nearly identical, many American emigres were forced to live from donation but some found excellent jobs as school teachers, plumbers and carpenters, and many went back to school. Once settled, the living conditions the draft evader experienced in Canada were very similar to those found in the United States.

Since 1964, many efforts were made to tabulate the total number of civilian draft resistors and military deserters. The estimates varied widely, ranging from 2,000 to 25,000 to 100,000 the State Department announced in 1970 that there were only 2,000. A list released by the Justice Department in Jan of 1975 showed that there remained only 4,400 Vietnam-era draft-law violators anywhere in the world who were subject to criminal prosecution.

There are several explanations for these discrepancies. For one, political motivations might have influenced both government and private figures during the war era. In addition, the counting methods used by all sources are certainly not infallible. The Canadian exile figures of up to 100,000 were derived by counting the number of files on newly arrived American emigrants at the aid centers strategically placed near the United States border, many of which included Americans who emigrated to Canada for reasons other than the draft or AWOL related offenses. A few aid centers kept files on American draft-age males without asking them whether a file had been previously started at another center. For these reasons, many were counted twice, some even perhaps even more. Speculation based upon our sample of applicants and the Department of Defense's sample of its applicants (and assuming that virtually all of the Department of Justice applicants are Canadian exiles), would indicate that only about 8,000 out of 123,000 persons eligible for the

President's program were ever Canadian exiles. There may have been others against whom complaints were issued but no indictments ever brought, who are now free to come home without penalty.

Experience with the Judicial Process

Filing of the complaint. Our applicant began to face court action when his local draft board determined that sufficient evidence of a Selective Service violation existed to warrant the forwarding of his file to the United States attorney. Between 1964 and 1974, 209,000 cases were referred by Selective Service to the Department of Justice for prosecution; of that number, only 25,000 indictments were returned. This startling figure can be partially explained by the practice of allowing violators to enlist rather than face prosecution; another major factor was the unwillingness of local U.S. Attorneys to prosecute draft cases which were increasingly unpopular, weak, and of relatively low priority.

2. Disposition of Draft Cases

a. Dismissals. After a complaint was filed by Selective Service and an indictment returned against our applicant's both the courts and the Justice Department determined whether further prosecution was warranted. Statistics from the Justice Department show that a large number of cases were dropped after indictment because of faulty Selective Service processing or recordkeeping. For instance, draft records were routinely destroyed when a registrant reached age 26.

Therefore, unless the records were separated, his files were destroyed and prosecution rendered impossible.

The courts dismissed draft cases for many reasons. Many dismissals represent cases involving legal flaws in which the defendants "committed no Selective Service violation at all, because the induction orders they refused were illegal as determined authoritatively by federal courts and U. S. attorneys." Included among these defendants are those who were called by their local draft boards earlier than usual or by mistake. In addition, in districts where careful pre-indictment investigations were the exception rather than the rule, cases were dismissed where it was found that the defendant never received his orders to report or where the local draft board never requested that the defendant be prosecuted.

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

One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or

a tendency to dismiss draft cases. As an example, the Northern District of California was known for its willingness to dismiss draft indictments on minor technicalities. Since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal. At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern District. In 1970, this dismiss averaged 48.9 draft cases per 10,000 population compared the national average of 14.1; the Central District of California closely followed with 43.1. Some apparently "Forum Shopped in California and other Western states; Five percent of them received their convictions in the Ninth Circuits, even though their homes were elsewhere.

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

Convictions and Acquitals

After our applicants were indicted and their motions for dismissal refused, many indicted draft violations pled not guilty, and they next entered the trial stage. Nearly three-fourths of our

applicants pled either guilty or nolo contendre. The emotional and financial drain of a protracted trial was certainly a factor in this decision, as was the availability of a plea bargain, especially in those jurisdictions where the U.S Attorney routinely brought multiple-count indictments.

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted. From our applicants statistics, it appears that a person pleading not guilty to a draft offense stood only a 15% chance of conviction. Not surprisingly, none of our applicants were among the 12,700 fortunate persons who were acquitted of draft charges. There were many reasons for these acquittals. In 1970-71, an increasing number of draft defendants were acquitted because of irregular or unconstitutional procedures used by local draft boards. Many of those acquitted were subjected to deliberately accelerated draft calls because they were regarded as troublemakers. The Supreme Court struck down this practice in Gutnecht v. U.S[18/] by holding that punitive reclassification was "blatantly lawless." Acquittals often occurred when local draft boards or state appeal boards failed to consider requests for medical deferments based on disqualifying conditions such as Astma. A number of acquittals also were obtained when it was found that the local board did not follow proper procedures, such as failure to state reasons for denying substantial claims for conscientious

objector or hardship status and failure to provide adequate ad-

rights.

In 1970 the Supreme Court in Welsh broadened the conscientious objection exemption by ruling that strongly held non-religious pacifist beliefs qualified for the exemption. For some time after this decision, Selective Service gave inadequate advice to local boards on the effect of this and other decisions. This lack of guidance resulted in acquittals for those post-Welsh denials of conscientious objection status which were based on pre-Welsh grounds. As described earlier, many of our applicants might have qualified for this type of acquittal.

Another significant factor in the increased rate of acquittals was the increased level of activity by competent attorneys in the field of Selective Service law. By 1970, anti-war feelings made it respectable for attorneys to represent draft violators. Draft counseling centers were also better able to recommend lawyers well versed in Selective Service law.

Our typical applicant was convicted at the age of 23, nearly two years after his initial offense. Less than one out of ten of our applicants appealed his conviction. An analysis of thse convictions rates shows clear jurisdictional discrepancies. For instance, the Southern states had the highest propensity for conviction, with the Eastern states and California having the lowest. In 1972

there were 27 draft cases tried in Connecticut, with only one resulting in conviction. In the Northern District of Alabama during the same period, 16 draft cases resulted in 12 convictions. These different conviction rates apparently occurred because of wide differences in attitude toward the draft violators. Regardless of the explanation, it is clear that these differences in treatment encouraged wide scale forum shooping by our applicants.

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

Sentence: The first aspect of the draft and judicial systems which often dealt favorably with our applicants was the sentence of the District Court Judge. Only about one-third of our applicants ever went to prison. A breakdown of the length of incarceration for our applicants is as follows:

No incarceration - 67%

1-6months - 15%

7-12 months - 5%

13-18 months - 8%

20-22 months - 5%

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

Other sentencing inequities occured on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was 33.5. months while for blacks and other minorities the average sentence was 45.1 a disparity which decreased to a difference of slightly more than two months in 1974. The average length of sentence for our black applicants were _____, compared to _____ for white applicants.

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

Although a variety of sentencing proccdures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving 1/3 of his term; or (2) an indeterminate sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before, but not after 1/3 of the sentence had expired. Under the Youth Correction Act, the convicted defendant might be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervison might have lasted as long as six years. Bureau of prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation cases. When it was applied, the six year maximum period of supervison was imposed in almost all cases.

Prison Experience: Over one-third of our applicants received prison sentences and were incarcerated, some for periods of up to five years. Since very little information is available concerning the treatment of Selective Service violators, we relied upon a brief survey of prison officials across the country to provide us with some evidence of the experience of our applicants in prison. Although this survey was not scientific and comprehensive, it did reveal the possible lack of uniformity in handling draft violators accross the country.

During the early years of the Vietnam war, Jehovah's Witnesses rather than other draft resisters filled the prisons. Jehovah's Witnesses were ideal prisoners because of their adaptability and tendency to avoid creating security problems. Most officials in our survey stated that Jehovah's Witnesses were selective about their associates, either sticking with one another or living alone. Other draft violators with other than religious reasons for their offenses experienced greater difficulty adapting to prison life.

The first prison in our survey was a Northeastern prison. This prison official stated that around 1970, as the climate changed on the outside, the men on the inside became more vocal. Stressing unity in numbers, this official found that draft violators were no longer a strange breed. They started to meet and socialize with each other and attempt to organize protests, which usually were not permitted. Draft violators tended to gravitate toward the Inmate Grievance committee and, by 1971, they were less cooperative and more disruptive. While this prison official denied that homosexual attacks were directed specifically against draft violators, he did characterize the vast majority of them as "young, not streetwise, pacifist and intellectual," thus "drawing attention" from hardened criminals.

A prison official in a Midwestern prison admitted that the draft violators were "not the most popular individuals" and caused staff resentment. He stated that because most of the other inmates were conservative, "waving the red, white and blue," who tried to isolate the draft violators. While he spoke highly of the Jehovah's Witnesses, he believed that draft violators did not adjust as well to incarceration. The draft violators were placed in minimum custody and were neither particularly "vocal" nor organized enough to make protests.

A Southern Prison official admitted that both his staff and the surrounding residents were conservative, an attitude reflected in prison life. The draft violators were subject to severe peer pressure. If they tried to expound on their beliefs, they were subject to ridicule from the other inmates. Anyone who spoke out against the war was considered "weird," so draft resisters stayed among themselves. They experienced some difficulty adjusting to prison life and, because of their passive nature, required support and encouragement. Although the prison maintained a work release program, draft violators were not allowed to participate in the 1960's because of adverse community reaction to them.

Our final prison interview was with an official in a Western prison. This official stated that the draft violators located in his prison generally posed no threat to security, adjusted well and abided by the rules and regulations. Although they had the potential to be influential and disruptive because of their higher educational level, they were not. This official thought they were more well-liked than draft violators during World War II. Their acceptability was attributed to the easygoing atmosphere of the surrounding community. Although anti-war ceremonies were not permitted at the prison, this official claimed no punishment or retaliation resulted from criticism of the war. He stated that draft violators were not excluded from work release

programs, but because they showed less need than other inmates, few expressed any desire to participate.

It appears that the draft violator faced the same pressure, boredom and loneliness as other inmates. Most reports from incarcerated draft violators themselves show that their strategy was a typical prison strategy: survival. This was hardly unique in view of the need for a callous and conformist response to a life-style of confinement. Whether a particular prejudice was directed toward them seemed to be a problem of locale.

While the Clemency Board has discovered no evidence of wide scale mistreatment of draft violators in federal prisons, isolated instances of harsh treatment occurred.

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

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

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

The parole grant rates for Selective Service violators, like all other prisoners, was determined categorically: it depended primarily on the nature of their offense and not on individualized aspects of their personal history or their imprisonment. It was the policy of many parole boards that draft

violators serve a minimum of two years for parity with military duty, but most Selective Service violators were released after their initial parole application. Jehovah's Witnesses received first releases in nearly all instances. The majority of those serving prison sentences over one year were released on parole whereas the great majority of those with prison sentences less than one year served until their normal expiration date. Most Selective Service violators were granted parole after serving approximately half their prison sentences. This is higher than the national average for all crimes, including rape and kidnapping. However, in each year from 1965 to 1974, Selective Service violators were granted parole more often than other federal criminals.

Consequences of The Felony Conviction

A felony conviction had many grave ramifications for our applicants. The overwhelming majority of states construe a draft offense as a felony, denying our applicants the right to vote -- or, occasionally, just suspending it during confinement. Some of the consequences of felony conviction are less well known. In some states, for example, a felon lacks the capacity to sue, although he or his representative may be sued; he may be unable to execute judicially enforceable instruments or to serve as a court appointed judiciary; he may be prohibited from participation in the judicial process as a witness or a juror. A lesser known consequence of a felony conviction might be that he may even lose certain domestic rights, such as his right to exercise parental responsibility. For example, six states permit the adoption of an ex- convict's children without his consent. The principle disability arising from a felony conviction is usually its effect upon employment opportunities. This effect is widespread among employers. One study found only one employer out of 25 willing to hire a convicted felon. Often,

this job discrimination is reinforced by statute. States license close to 4,000 occupations, with close to half requiring "good moral character" as a condition to receiving the license; therefore, convicted felons are often barred from such occupations as accountant, architect, cosmetologist, dry cleaner and barber.

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

Even more severe restrictions exist in the public employment section.

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

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

Despite this, our civilian applicants generally fared reasonable well in the job market. Nearly three out of four applicants were employed either full time or part time when they applied for clemency. In fact, only 2% of our civilian applicants were unemployed at the time of their application. The remainder of our applicants had returned to school (13%), were presently incarcerated (%), or were furloughed by prison officials pending disposition of their cases by our Board (%).