The original documents are located in Box 5, folder "Final Report - Draft, 10/2-7/75 (1)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

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CHAPTER I

INTRODUCTION

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

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

Just six weeks after he become President, Johnson followed Attorney General Speed's advice. He declared a limited and

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

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

To the members of the Presidential Clemency Board, the President's program assumed a greater meaning. We came to the Board as men and women whose views reflected the full spectrum of the public opinion on the war and on the question of amnesty. As we discussed the issues, a consensus began to emerge. We all came to see the

President's program as more than compromise. It was an appropriate and fair solution to a very difficult problem.

As we examined the President's program, it appeared to us that it was anchored by six guiding principles. Taken together, they provide an excellent means of understanding the spirit behind his clemency proclamation. They also provide the guidelines we used to implement our responsibilities under his program.

The first principle was one about which there can be no disagreement: The need for a program. After almost nine years of war and nineteen months of an acrimonious debate about amnesty, President Ford decided it was time to act. America needed a Presidential response to the issue of amnesty for Vietnam era draft resisters and deserters. As he created the program, the President authorized three agencies -- the Department of Justice, the Department of Defense, and the Presidential Clemency Board -- to review cases of different categories of draft and AWOL offenders. He designated a fourth entity, the Selective Service System, to implement the alternative service aspect of the program.

The second principle was that the program should offer clemency, not amnesty. Too much happened during the war to

permit Americans to forget. The President often stated that he did not want to demean the sacrifice of those who served -- or the conscientious feelings of thosed who chose not to serve. But the inability to forget does not preclude the capacity to forgive. President Ford declared that he was placing "the weight of the Presidency in the scales of justice on the side of mercy." By ordering that draft prosecutions be dropped, that military absentees be discharged, and that persons punished for draft or desertion offenses be eligible for Presidential pardons, he tried to make America whole again. He offered to restore the rights and opportunities of American citizenship to people who had been made outcasts because of conscientious beliefs of their inability to deal effectively with their legal obligations.

His third principle was that he would offer most applicants conditional, not unconditional, clemency. Clemency would have to be earned through performance of several months of alternative service in the national interest. Regardless of the motive behind an applicant's draft or desertion offense, he still owed a debt of service to his country. Performance of that service was the precondition for forgiveness.

Fourth he declared that this was to be a limited, not universal program. Had he included only those who could

prove that their offense had resulted from opposition to war, he would have been unfair to less educated persons. Had he included all persons convicted of military or draft offenses, no matter what the nature of the crime, he would have seriously impaired respect for law. Instead, the President listed several draft and desertion offenses, which if committed during the Vietnam era, would automatically make a person eligible to apply for clemency. On balance, he drew the eligibility line generously; of the 125,000 persons eligible, only an estimated 25% actually committed their offenses because of a professed conscientious opposition to war.2/

Fifth he decided that this was to be a program of definite not indefinite, length. There would be an application deadline, giving everyone more than four months' time from the program's inception to apply (later extended by two months). This would permit all cases to be decided within one year, and -- even more important -- it would put an end to the amnesty issue. He hoped that reconciliation among draft resisters, deserters, and their neighbors would take place as quickly as possible. Altogether, about 22,500 eligible persons applied for clemency.3/

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

During the twelve months of its existence, the Presidential Clemency Board decided close to 16,000 cases. It tried to apply the spirit of these principles to every case. In this report, we explain what actions we took, what we learned about our applicants, and what we think we accomplished. Where possible, we also try to put the President's entire clemency program in some perspective. The policies and procedures of the Department of Justice, the Department of Defense, and the Selective Service System are useful benchmarks for understanding the full context of the Board's own policies and procedures.

The report begins with a discussion of how the Board implemented each of the President's six principles. Next, we describe what we learned about the experiences of the

civilian and military applicants. We then describe how we managed what was at all times a "crisis" operation. We then try to put the President's program into an historical perspective through a comparative analysis of other instances of executive clemency in American history. Finally, we discuss what we think the President's program accomplished.

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CHAPTER II: THE PRESIDENT'S CLEMENCY PROGRAM

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

Regardless of political or philosophical perspective, all will agree that the war in Vietnam had a significant impact on our country and on the lives of most American citizens. The war resulted in the loss of hundreds of thousands of lives, including the live of fifty-six thousand American soldiers. It forced many more people to leave their homes and countries. Nightly, television brought the war into every American living room. For the first time the average citizen witnessed the reality of war, almost at first hand. Conflict between pro- and anti-war advocates increased dramatically. Slogans such as "American, Love It or Leave It," "Peace with Honor," and "Unconditional Amnesty Now" came to be symbolic of the divisions in our country. Patriotism meant different things to different people. Most believed that love of country could best be demonstrated by defending America's interest on the battlefield. But others insisted that love of country required a critical reversal of national policy. They felt that by opposing the war and resisting military induction, they could serve America by changing its foreign policy.

Over and above the political consequences of the war were the personal tragedies. Thousands of Americans lost their lives, and thousands of American families lost their loved

ones. Untold hundreds of thousands must bear the physical and psychological scars of their experience for the remainder of their lives.

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

One of the most critical and difficult decisions confronting a country is to send its sons to war. The stakes are high. Nothing can every be done to compensate for the supreme sacrifice of those who die or or thcse lose their loved ones. Nonetheless, this does not preclude a subsequent decision to be merciful toward those who did not serve in a war many Americans did not understand or support.

Shortly after assuming his office, President Ford wanted to "bind the Nation's wounds and to heal the scards of divisiveness." As one of his first initiatives as President, he issued Proclamation 4313, creating the Clemency Program. The President felt that "in furtherance of our national commitment to justice and mercy" it was time for an "act of mercy" aimed at national "reconciliation" with the greatest

degree of public cooperation and understanding. He issued Proclamation 4313 to outline how his program was to be implemented. When the Program began on September 16, 1974, a year and a half had passed since the last American combatant had left Vietnam.

President Ford recognized that desertion and draft evasion in wartime are serious offenses which, if unpunished, would have an adverse effect on military discipline and national morality. Nevertheless, he recognized that "reconciliation among our people does not require that these acts be condoned." It did require, however, that these offenders have an opportunity "to contribute a share to the rebuilding of peace among ourselves and with all nations, (and)...to earn return to their country." It was on this foundation that President Ford constructed his Clemency Program. He entrusted its administration to three existing government agencies -- the Department of Justice, the Department of Defense, and the Selective Service System -- and created the Clemency Board within the Executive Office of the President to consider applications from people not already under the jurisdiction of the other agencies. These four governmental units were ordered to implement a program offering forgiveness and reconciliation to approximately 113,000 draft resisters and military deserters.

Unconvicted draft evaders were made the responsibility of the Justice Department. Members of the Armed Forces who had been administratively classified as being an unauthorized absentee during the eligibility period and who remained at large, came under the purview of the Defense Department's program. The vast majority who had already been convicted or otherwise punished for their Vietnam-era offenses became the responsibility of the newly created Presidential Clemency Board.

On September 16, 1974, the President appointed nin persons to this Board with former U.S. Senator Charles E. Goodell designated as Chairman.1/

Beginning in September, the Board met on a regular basis in Washington, D.C. As the number of applications swelled from 860 in early January to 21,500 by the end of March, it became apparent that the nine original Board Members and the initial staff of eighteen could not complete the Board's work within the twelve-month deadline set by the President. Thus, in May 1975 the President expanded the Board to eighteen members and authorized a staff increase to over 600 to complete the work on time.

The expanded Board included members with widely ranging experiences and points of view. Some members openly advocated unconditional amnesty, and others had spoken out strongly against the war. Several believed that our mistake lay in not pursuing the war effort more vigorously. All members were aware that the President's clemency program had to be implemented carefully to avoid having a serious impact on military discipline and to avoid impairing our strength in a future military emergency. Except for three women and two clergymen, all Board members were veterans of military service. Five were Vietnam veterans, two of whom were disabled in combat. Another commanded the Marine Corps in Vietnam. One Board member has a husband still listed among those missing in action. Two black men, one black woman and one Puerto Rican woman were on the Board. We also had a former local draft Board member, an expert in military law, and others with special backgrounds and perspectives which contributed to a well-balanced Board. The original nin-member Board was broadly representative of national feelings on the war and on the issue of amnesty and clemency. The expanded Board of eighteen was carefully selected to preserve this balance.

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B. Limited, Not Universal, Program

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

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

needs of the country were not as evident to them as the personal sacrifices they or their families had to endure.

For these reasons, the President's definition of those eligible for clemency was phrased in terms of offenses committed, and not the reasons for the offense. The President extended a clemency offer to Vietnam veterans who went AWOL to find a civilian doctor to treat their wounds, to cope with readjustment problems after returning from Vietnam, or to support families forced to go on welfare. Likewise, he extended it to civilians from disadvantaged backgrounds whose ignorance and itinerancy led to their failure to keep their draft boards informed of their whereabouts. In the thousands of cases we have reviewed, we found that the list of victims of the Vietnam War was one of much greater variety than we had originally thought.

Eligibility Criteria for the Program

The Presidential Proclamation established three criteria for eligibility. First, the Program applied only to offenses that occurred during the war period. This was defined as extending from the Gulf of Tonkin Resolution (August 4, 1964) through the day that the last American combatant left Vietnam (March 28, 1973). Second, an applicant must have

committed one of the offenses specifically listed in the Proclamation. Military applicants must have violated Article 85 (Desertion) of the Uniform Code of Military Practice, Article 86 (absence without leave) an Article 87, (missing movement). Draft evaders must have committed one of the following violations of Section 12 of the Selective Service Act: (1) failure to register for the draft or register on time; (2) failure to keep the local draft board informed of his current address; (3) failure to report for or submit to preinduction or induction examination; (4) failure to report for or submit to induction; or (5) failure to report for or submit to or complete alternative service. Third, to be eligible, an applicant must not have been an alien precluded by law from reentering the United States.1/ The eligibility tests set by the President no doubt excluded some fugitives, convicted offenders, and discharged servicemen whose offenses were motivated by their opposition to the war. For example, there were a few military applicants who, out of conscientious objection to the war, refused to report to Vietnam. Instead of going AWOL, these men faced court-martial for willful disobedience of a lawful order. Had they gone AWOL, they would have received clemency; because they remained on their bases and accepted the punishment for their actions, they still have their bad discharges. Also, persons convicted of or charged with such

other Selective Services offenses as draft card mutilation or aiding and abetting draft evasion were ineligible for clemency because these were not among the crimes listed in the Executive Order.

Before the President announced his program, there was considerable debate in Congress and elsewhere about the kinds of offenses that properly should be included in a clemency or amnesty program. As with most disputes on the subject, opinions varied greatly. There was, however, general agreement that absence and induction offenses should be included because the vast proportion of Vietnam-related offenses were of this type.2/ Categories of offenses involving calculated interference with the draft system, or with military discipline, or involving violence or destruction of property would have had a far more serious impact on respect for law and military discipline.

Eligibility for the Presidential Clemency Board

Eligible applicants to our Board included only those who had been convicted or punished for the above offenses. Therefore, for a civilian to be eligible, he must have been convicted of one of the Selective Service violations listed above. For a former serviceman to be eligible, he must have

received an undesirable, bad conduct, or dishonorable discharge "as a consequence of" his absence offenses. Anyone discharged with either an Honorable or a General Discharge was not eligible.

The Proclamation prevented our Board from accepting cases in which the underlying facts of the offense may have supported a charge over which we had jurisdiction, but in which the individual was in fact prosecuted for a nonqualifying offense. The Executive Order clearly stated that the discharge must have been based on unauthorized absence. Thus, an Article 92 conviction for failure to obey an order to go to an appointed place must have been charged as an AWOL. An individual discharge for a civilian conviction could also have been discharged for unauthorized absence while in civilian custody. There were numerous gray areas in which difficult jurisdictional determinations had to be made.

The other agencies had accurate counts of eligible persons; 4,522 were eligible for the Justice program and 10,115 for the Defense program. We had to rely entirely on estimates which these agencies gave us. Our 8,700 total for civilian eligibles came directly from Department of Justice records. Our 90,000 figure for military eligibles is 80% of the

111,500 originally estimated by the Department of Defense from their records of AWOL-related discharges.3/ We reduced that later figure by 20% because the Department of Defense found that its original estimate of persons eligible for its own program was 20% too high; they reduced it from 12,600 to 10,115 through a closer inspection of records. We expect that the same attrition would result from a close inspection of our eligible persons' records.

We recognized that this was a clemency program, requiring us to interpret broadly and generously the jurisdictional boundaries. To be narrow and unduly legalistic in determining eligibility would have been contrary to the spirit of the program.

The military cases presented difficult questions of interpretation. For example: "The Board...shall consider the case of persons who...(1) have received punitive or undesirable discharges as a consequence of violations of Articles 85, 86, or 87...." The phrase "as a consequence of" gave us particular difficulty. We decided that the phrase did not mean "as a consequence of" an AWOL only. In many cases individuals were administratively discharged for unfitness or frequent involvement with authorities based on a pattern of offenses -- including AWOLs -- none of which

warranted a court-martial. The AWOL had to be viewed as one, if not the sole cause of the discharge. This occasionally meant that an individual might have been administratively discharged for unfitness for a very short AWOL, plus numerous other minor infractions. It was impossible to devise any objective method to separate the reasons for the discharge. The services leave administrative discharges for unfitness to the discretion of commanders. They do not issue hard and fast rules on the number, kind, or severity of misconduct necessary to warrant an Undesirable Discharge. We recommend the dual need to have clear and objective jurisdictional rules, while at the same time retaining flexibility to make correct dispositions in cases in which a short AWOL was an insignificant factor in the discharge. We decided that the need for clear and consistent jurisdictional rules required us to accept these marginal cases, since the right to have one's case heard should be broadly granted. However, the overwhelmingly poor military records of these applicants could result in a denial of clemency, a consequence much less desirable than a denial of jurisdiction.

The court-martial cases presented similar difficulties because, unlike civilian courts, sentences were not rendered separately when an individual was convicted on several

different charges, one of which was an AWOL. Since an individual might well have been court-martialed for a major felony and a very short AWOL, it was obvious that the discharge would have been awarded irregardless of the AWOL offense. In court-martial cases, however, military regulations define the maximum punishments for different offenses. Thus, we consulted the Manual for Court Martial, 1969, Table of Maximum Punishments to formulate simple rules to determine when we had jurisdiction in cases involving court-martial discharges. We applied the same rules to administrative discharges given in lieu of court-martial. As a general rule, we determined that:

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

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

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

The exclusion from the program of persons who were precluded by law from re-entering the United States also posed difficult problems. If an order of a court or the Immigration and Naturalization Service had already decided the question, we were bound by that determination. But we considered it not within our province to decide complex questions of immigration and citizenship law. For that reason, we provisionally accepted the cases of persons for whom no such determination had yet been made. We made tentative decisions on the cases, and we forwarded them to the President with a recommendation that he not act until proper judicial or administrative determinations had been made by the Justice Department. Altogether, we received approximately 6,000 applications from ineligible persons. Many had committed offenses during other wars, had received general discharges, or had been discharged for reasons not covered by the program. While we could not help them directly, we informed each one by letter of other legal and administrative remedies available to them.

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CH III

Chapter III. Case Dispositions

A. Summary

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

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

Our actual case dispositions are listed below:*

PCB FINAL DISPOSITIONS - CIVILIAN*

	Number	Percent	Cumulative

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

PCB FINAL DISPOSITIONS - MILITARY2/

	Number	Percent	Cumulative
Pardon	4888	37.6	37.6
1-3 months	2613	20.1	57.7
4-6 months	2977	22.9	80.6
7-9 months	1235	9.5	90.1
10-12 months	442	3.4	93.5
13 + months	26	0.2	93.7
No Clemency	819	6.3	100.0
Total	24000		

PCB FINAL DISPOSITIONS - TOTAL3/

	Number	Percent	Cumulative

Pardon	6540	43.6	43.6
1-3 months	2777	18.5	62.1
4-6 months	3075	20.5	82.6
7-9 months	1257	8.4	91.0
10-12 months	476	3.2	94.2
13 + months	34	.2	94.4
No Clemency	841	5.6	100.0
Total	16000		

B. Impact of Baseline Caculations and Aggravating/Mitigating Factors

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

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

13-24 months	1.9%	0.7%

Our application of mitigating and aggravating factors affected our decision to grat clemency -- and, if so, to go up or down from the alternative service baseline. We applied these factors with different frequency and with different weight. The table on the following page shows the relative frequency of all factors. Note the difference between the factors most often applied in civilian and military cases. The typical civilian case had no aggravating factors, but had mitigating factors #4 (public service), #10 (motivated by conscience), and #11 surrendered). The typical military case had aggravating factors #1 (other civilian or court-martial convictions), #8 (multiple AWOLs), and #9 (extended length of AWOL), along with mitigating factor #6 (creditable military service).

The weight with which we applied our factors is difficult to assess, even in hindsight. We often designated factors as "weak" or "strong" when making case dispositions, and some factors were applied in a variety of ways. For example, aggravating factor #1 was applied if an applicant had received a prior court-martial for an AWOL offense before his discharge, and it was applied (with much more significance) if he had been convicted for a violent felony offense.3/ Our tables do not distinguish between the two.

Nevertheless, some interpretation of the weights of our factors can be inferred from the table on the following page. This table shows the frequency with which we applied each factor in our three basic types of dispositions -- outright pardons, alternative service, and no clemency.4/ For example, we applied aggravating factor #1 (other adult felony convictions) in 1.8% of our civilian pardon cases, 11.2% of our civilian alternative service cases, and 78.9% of our civilian no clemency cases. From this table, it appears that the presence or absence of of the following factors had some relationship to an applicant's likelihood of receiving a pardon or a no clemency disposition. Others appeared to have no such relationship, and still others were applied to infrequently to prevent any inference from being drawn.

Civilian		Military	
Pardon	No Clemency	Pardon	No Clemency
Agg 1	Agg 1	Agg 5	Agg 1
Agg 5	Agg 7		Agg 4
Agg 7		Mit 2	Agg 7
Mit 4	Mit 4	Mit 3	Mit 11
Mit 9	Mit 10	Mit 5	
Mit 10	Mit 11	Mit 6	
		Mit 7	Mit 2

Mit 8	Mit 12
Mit 11	Mit 11
Mit 12	
Mit 13	
Mit 14	
Mit 15	

The relationship between our factors and our case dispositions can be seen even more clearly in the table on the following page. It shows the likelihood of each type of case disposition, given the presence of a particular factor.5/ For example, a civilian case with mitigating factor #11 (surrender) resulted in an outright pardon 85% of the time, alternative service 14% of the time, and no clemency in the other 1%. From this table, the following inferences can be drawn about the strength of the various factors.

Civilian		Military	
Strong	No Effect	Very Strong	Strong
Agg 1	Agg 3	Agg 4	Agg 1
Agg 5	Agg 6	Agg 11	Agg 2
Agg 7	Agg 12		Agg 3
			Agg 5
Mit 4	Mit 1	Mit 12	Agg 7

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

One problem with the preceding tables is that they focus on factors separately, rather than in combination. Often, aggravating and mitigating factors meant much more when they were applied in particular combinations. For example, mitigating factor #6 indicated the length of an applicant's military service, while mitigating factor #14 indicated the quality of that service. The two together told a much different story about a person than did one without the other. The following three tables show how our range of dispositions varied depending on

single-factor changes in our mix of mitigating and aggravating factors. The mean case disposition is underlined for each combination of factors.6/ From these tables, it appears that all factors included in them had at least a slight effect upon our case dispositions. (Recall that the preceding analysis finds otherwise--that aggravating factor #9 and mitigating factory #6 had no effect in military cases.)

Impact of Selected Factors on Civilian Case Dispositions

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

Impact of Selected Mitigating Factors on Military Case Disposition

Agg 1	Mit #	# of Cases	Pardons	3 AS	4-6 AS	7+ AS	NC

1,8,9,12	1,2,6,7,14	11	11	-	-	-	-
1,8,9,12	2,6,7,14	28	23	3	1	-	1
1,8,9,12	2,6,14	79	34	21	18	3	3
1,8,9,12	2,6	114	20	29	47	13	5
1,8,9,12	2	50	2	3	13	26	6
1,8,9,12	-	7	-	-	1	1	5

Impact of Selected Aggravating Factors on Military Case Dispositions

Agg 1	Mit #	# of Cases	Pardons	3 AS	4-6 AS	7+ AS	NC
-	6	2	-	1	1	-	-
8	6	11	-	5	5	1	-
5,8	6	17	1	2	7	7	-
1,5,8	6	34	2	2	14	6	10
1,5,8,9	6	38	-	2	9	16	11
1,5,8,9,11	6	3	-	-	-	1	2

C. Civilian Case Dispositions

Our civilian applicants received mostly outright pardons (83%), with a much smaller proportion assigned to alternative service (16%), and very few denied clemency (1.1%). The following table shows the most frequent combinations of factors in civilian cases. The cases represented in the table accounted for over

half of all our civilian cases. Aggravating factors were virtually absent in these cases, and mitigating factor #10 (conscientious reasons for offense) appeared in the six most frequent combinations of factors.

Most Frequent Civilian Cases

Agg Factors	Mit Factors	# Cases	Pardon	AS	NoC1
-	4,10,11	375	370	5	0
-	10,11	161	159	2	0
-	4,10	144	139	5	0
-	10	74	69	5	0
-	4,9,11	33	33	0	0
-	9,10,11	32	32	0	0
-	4	31	30	1	0
5	11	26	8	18	0
-	-	25	16	9	0

Civilian cases which received outright pardons typically had no aggravating factors (or just #12, apprehension), mitigating factor #10 (conscientious reasons), and mitigating factor #4 (public service). The table below lists the combinations of factors which had the greatest proportion of outright pardons.7/

Civilian Pardon Cases

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

From our sample of civilian applicants,8/ it appears that those most likely to receive outright pardons were Jehovah's Witnesses (96%)9/ who were granted CO status (92%), whose offense was failure to perform draft-board-ordered alternative service (94%) because of their membership in a religion opposed war (92%), who were sentenced to alternative service (84%), and who completed over two years of court-ordered alternative service work (90%).

Also likely to receive an outright pardon was a civilian applicant with a college education (82%) who had a CO application denied (82%), refused to submit to induction (81%) because of ethical or moral opposition to war (78%), who surrendered (80%), served more than one year in prison (78%), who was in school at the time of his clemency application (85%), who submitted a letter in support of his application (79%), and whose Selective Service files were used by our case attorney in preparing his case summary (82%).

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

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

(Case #00552) Applicant filed for a C.O.'s exemption on the basis of his ethical conviction that the preservation of life was a "Fundamental point of my existence." The local board denied it, presumbably because his conviction 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.

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

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

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

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

Civilian cases which received no clemency dispositions almost always had aggravating factor #1 (other adult felony

convictions), and usually had aggravating factor #5 (selfish reasons for offense) and no mitigating factors. The table below lists the only combinations of factors which accounted for two or more civilian no clemency cases.

Civilian No Clemency Cases

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

From our sample, the civilian applicants most likely to be deneid clemency10/ were black (4.9%)11/ with a grade school education (3.3%) and an IQ under 90 (5.9%), whose offense was failing to register for the draft (8.3%), who did not commit the offense because of opposition to war (12.6%), who was sentenced to probation (2.4%), who performed no alternative service (2.5%), who had committed another nonviolent felony offense (6.7%) or a violent felony offense (100%), who was incarcerated at the time of his clemency application (33%), whose lawyer communicated with us while his clemency application was pending (5.5%), and whose records were incomplete at the time our case attorney prepared his summary (5.2%).

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

(Case #02407) This civilian applicant had three other felony convictions in addition to his draft offense. On September 23, 1970 he received a one-year sentence for sale of drugs. In 1971 he received one year of impriosnment and two years of probation for possession of stolen property. On October 18, 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 March 23, 1974 he was convicted of assault, adbuction and rape for which he received a 20-year sentence.

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

(Case #10374) Applicant wrote the local board and asked for a postponement of his induction because he

alleged he had received injuries in a car accident which disqualified him for military service. He did not submit a physician's statement. The board, therefore, ordered to report. He claimed the board had ignored his earlier request and did submit a stement from his doctor showing that he had received some injiries 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 reasen 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 was poor; he has shown no initiative and is out of work most of the time. His wife is now supporting him.

Not all of our civilian cases fell clearly into the categories described above. In a very few cases, our Board was sharply divided -- especially where very strong mitigating and

aggravating factors conflicted with one another. Consider the following case:

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

schizophrenia, said to be caused by his belief in trepantation.

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

D. Military Case Dispositions

Most of our military applicants were assigned to alternative service (56%), with a smaller proportion receiving outright pardons (38%), and the others denied clemency (6.3%). The following table shows the most frequent combinations of factors in military cases. All had aggravating factors #8 (multiple AWOLs) and #9 (length AWOL) and mitigating factor #6 (creditable military service). All but one had mitigating factor #2

(personal or family problems). However, these cases represent just 4% of all military cases, because of the great variety of factor combinations applied to these cases.

Most Frequent Military Cases

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

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

combinations of factors which had the greatest proportion of outright pardons.12/

Military Outright Pardon Cases

Agg Factors	Mit Factors	# of Cases	# Pardons
1,8,9,12	1,2,6,7,14	11	11
8,9,12	2,6,7,14	11	11
8,9	1,2,6,7,11,14	10	10
1,8,9	2,6,7,11,14	16	15
1,8,9	2,6,7,11,14	13	12
1,8,9,12	1,2,6,8,14	11	10
8,9	2,6,7,14	23	19
1,8,9,12	2,6,7,14	28	23
8,9.12	2,6,7,14	21	17

8,9	1,2,6,8,11	15	12

From our sample military applicants, those most likely to receive outright pardons were blacks (47%) 13/ or persons of other minority backgrounds (55%), born before 1945 (52%), with an AFQT score of Category IV (46%), who had over two years (62%) or over three years (78%) of creditable military service, including a partial Vietnam tour (61%) or a full Vietnam tour (83%) or multiple Vietnam tours (93%), whose last AWOL offense was after 1971 (46%), whose AWOLs were attributable to post-combat psychological problems (88%), who was unemployed at the time of his application (50%), and whose lawyer communicated with us while his clemency application was pending (78%).

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

The most clear outright pardon cases among our military applicants were those with truly outstanding service records

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

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

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

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

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

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

(Case #00291) The applicant commenced his first AWOL after he was assaulted by a cook while in KP. After his second AWOL, he was allegedly beaten by 5 MP's while confined in the stokade. 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.

Military cases which received no clemency dispositions almost always had aggravating factor #1 (other adult felony convictions), and usually aggravating factor #5 (selfish reasons for offense) and no mitigating factors other than #2 (creditable military service). The table below lists the combinations of factors most likely to result in no clemency dispositions.14/

Military No Clemency Cases

Agg Factors	Mit Factors	# of Cases	# No Clemency
1,5,8	-	18	9

1,8	6	29	14
1,5,8,9	1	14	6
1,8	-	13	5
1,5,8,9	2,6	18	7
1,8	1,6,11	18	6
1,5,8	6	34	10
1,5,8,9	6	38	11

From our sample, the military applicants most likely to be denied clemency were black (14%) 15/, or of other minority backgrounds (11%), born after 1949 (11%), with AFQT scores in Category III (10%) or Category IV (9%), who had less than 12 months creditable service (11%) and a partial tour in Vietnam (13%), whose AWOL resulted either from post-combat psycholcgical problems (12%) or any reason unrelated to opposition to war or personal/family problems (11%), who fled to a foreign country while AWOL (23%) before being apprehended (10%), who faced non-AWOL charges at the time of his discharge (14%), who has committed non-violent felony offense (24%) or violent felony offenses (73%), who was

incaracerated at the time of his clemency applications (61%), and whose records were incomplete when our case attorney prepared his summary (12%).

Applicants relatively unlikely to be denied clemency were born before 1945 (4%), college-educated (0%), with an AFQT score of Category I (5%), who was drafted (6%), who had more than two years (4%) or three years creditable service (3%) with one full Vietnam tour (6%) or multiple Vietnam tours (0%), whose AWOL offense resulted from conscientious objection to war (3%), who lived openly at home while AWOL (3%) before surrendering (6%), who did not face non-AWOL charges at the time of his discharge (6%), who has committed no civilian felony offenses (3%), who was in school (0%) or unemployed (0%) at the time of his clemency application, and whose lawyer communicated with our case attorney while his clemency application was pending (0%).

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

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

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

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

(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 subsequently dropped onto a hill where they engaged the enemy in

combat). He asked to remain in the rear, but his request was denied. Consequently he left the company area because, in the words of his chaplain, the threat of death caused him to exercise his right of self-preservation. Applicant was apprehended while 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.

(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 years 10 months 20 days), five periods of qualifying AWOL (8 days; 3 months 28 days; 1 month 2 days; 2 months 13 days; 6 months 29 days) and one period of non-qualifying AWOL (3 months 28

days). This is a total of one period of desertion, 15 periods of qualifying AWOL and one non-qualifying AWOL (total of 5 years).

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

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

alleged combat wounds. Applicant claims that he is now disabled and has required hospitalization for his leg wounds. He is presently unemployed.

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

E. Comparison with Case Dispositions for the Other Programs

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

Comparing their case dispitions to ours can be misleading, unless prior punishments are taken into account. When our military applicants' time in jail (average: 2 1/2 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.16/

Comparison of PCB and DOD Case Dispositions

	DOD	Unadjusted PCB	Adjusted PCB
Disposition	Cumulative %	Cumulative %	Cumulative %
Pardon	0	41	0

1-5 months	2	66	0
6-12 months	15	28	66
13-18 months	22	0	28
19-24 months	100	0	0
25+ months	-	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.17/

Comparison of PCB and DOJ Case Dispositions

Disposition	DOJ Cumulative Percent	Unadjusted PCB Cumulative %	Adjusted PCB Cumulative Percent

Pardon	0	83	0
1-5 months	2	10	0
6-12 months	13	6	0
13-18 months	36	0	0
19-24 months	100	0	0
25+ months	-	0	99

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